

2592
United States
Court of Appeals

For the Ninth Circuit.

No. 12300

WALTER D. ACKERMAN, JR., individually and as Attorney General
of the Territory of Hawaii, and JEAN LANE, individually and as
Chief of Police of the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION, a voluntary unincorporated association and labor union,
et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the County of
Maui, and WENDELL F. CROCKETT, individually and as Deputy
to the County Attorney for the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION, a voluntary unincorporated association and labor union,
et al.,

Appellees.

No. 12301

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of the Territory of Hawaii,

Appellant,

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Transcript of Record

In Four Volumes

Volume III Pages 1067 to 1570

Appeals from the United States District Court for the
Territory of Hawaii

FILED

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PAUL R. O'BRIEN,
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PROCEEDINGS CONTINUED

The Court: Is there any objection to the offer?

Mr. Resner: I don't deem it relevant, but I am not going to make it any objection. [545]

The Court: The document may be marked with the next Prosecution letter.

Deputy Clerk: Exhibit "D."

Mr. Crockett: We have nothing further.

(Thereupon argument was held by Counsel for the Defendants.)

(The Second Circuit Court recessed at 2:23 p.m. and reconvened at 2:30 p.m.)

(Thereupon argument was held by Counsel for the Prosecution.)

(Argument in rebuttal was held by Counsel for the Defendants.)

(The Second Circuit Court recessed at 3:05 p.m.) [546]

(The Second Circuit Court reconvened at 3:12 p.m.)

The Court: I appreciate the fact that perhaps a more finished result could be obtained by awaiting a careful written decision in the matters before the Court, but it is my view that the matters presented in these proceedings might better be pushed forward to some conclusion—even with an inadequate oral decision taken by the Court Reporter.

I have been on the Bench in this Territory for twenty-one years, have been to this Circuit many times on matters pertaining to First Circuit busi-

ness and Territorial business generally. I therefore think that it is not out of order for the Court to take judicial notice of the ordinary facts of the Territorial situation and the County of Maui because it is a well-known factor that this is an island community with scattered rural sections engaged, as the evidence also shows, in agricultural pursuits in the main, but agricultural pursuits stemming from an activity that needs large blocks of capital, that is, for the economic situation, and thereby providing labor possibilities and means of livelihood for the population here. But by reason of the scattered nature of the different communities on the three Islands composing this County, those communities are what might be described by one [547] who knows the atmosphere as being little neighborhoods where, as Mr. Pombo gave evidence from his testimony, it is not difficult for one travelling around in politics or in the task which occupies him to get acquainted, not only personally, but through information gained from persons known about persons, that he does not know in that contact sense, of the standing and reputation of, well, you might almost say everybody who is a qualified voter. That is the general conclusive inference from Mr. Pombo's testimony. So that an inference that these jury commissioners have picked out, in the subversive sense used in some of the cases, their personal friends, would be an entirely wrong conclusion. They have sought information from each other as commissioners about the character, intel-

ligence and general familiarity of the personnel in the lists that they had available as to whether those people moved in and amongst their little neighborhoods with an understanding of the problems of the people with whom they were neighbors.

And in that connection, I am compelled to digress slightly in a logical continuity to call attention to what is available from the Revised Laws as a matter of judicial notice of the statutes reflecting the build-up of this Territorial community. And in that connection in Chapter 30 of the Revised Laws dealing with the subject of education, Section 1824 [548] indicates that it has been necessary on the question of English for standard schools in the past, as different from ordinary public schools, so that the quality of English could be improved. And then the Legislature of 1945 amended that section so as to gradually carry the idea, not as to separate standard schools, but as to standard sections in every school.

I point that out to show that the background of any statistical list from the United States Census or any other known list of that character which might be applicable to continental United States is not applicable, *per se* and *ipso facto*, to the conditions of the motley mixtures of races that we find being educated in our public schools. So that to say merely that a person has gone through the fourth grade or to say merely that a person has gone through the eighth grade that that *ipso facto* characterizes his ability to understand what goes

on in a court room where the English language is the language in which the records are kept, is not something that can be drawn as a quick conclusion, but requires a little more than that.

Coming back to the more material features of the motion before the Court, I must first clear out from consideration to get down to the meat some things that appear in the record. One of the first things that I must clear out, so that the record may be clear upon it, is the reason why the Court has excluded from any material consideration here the question of the consideration of women in our problem as qualified jurors and their absence as being part of one of the elements of the challenge as being immaterial. The leading case upon that point, Counsel somehow doesn't seem to focus his eyes upon what to my mind is the material gist of the Court's ruling—the syllabus right at the outset. I am reading now from Volume 329, United States Reports, No. 1, Page 187, *Ballard vs. United States*:

“In a State where women are eligible for jury service under local law, a federal jury panel from which women are intentionally and systematically excluded is not properly constituted——”

And in the decision, the Court points out that there has been no congressional statute setting forth as an act of Congress the qualifications of jurors, generally, in the federal court. On page 190 in the opinion:

“Congress has provided that jurors in a federal court shall have the same qualifications as those of the highest court of law in the State.”

And then we are faced with this fact. Congress has legislated for the Territory of Hawaii in the Organic Act the qualifications of the jury which the challenges have mentioned, and has provided that a juror must be a male citizen. Counsel has pointed [550] out that there has been a change in the voting status of women since that, but the fact remains that Congress has not seen fit, for reasons of its own, to implement that into the question of the jury qualifications, and it is conceivable that they may have some reasons for it, and this Court cannot judicially legislate. Hence, the reason why this Court has excluded from any further consideration the question of the challenge, because that there are no women is obvious from the authority cited.

Secondly, there is a challenge, and it has been amended, by which the defendants challenge named jurymen on the particular panel that has been drawn for this particular jurisdiction, and the Court pointed out in the development of the case that all that has been alleged in that challenge is the conclusion of the minds of the attorneys for the defendants that each of these gentlemen is prejudiced against the defendants. No facts were set out as to why. "That certain grand jurors are members of the employer class or their representatives"—and the Court knows no logical sequence that because they might be of the employer class or their representatives that there flows in the minds of human beings prejudice against other human beings—it is a total non sequitur.

“That certain grand jurors are connected with, either directly or indirectly, the various business concerns involved in the recent pineapple strike out [551] of which the instant cases arose.” Well, every member of Maui who is supported by the economy is in some way, directly or indirectly, connected with the pineapple activity and its effects upon that economy.

“That defendants and each of them cannot get a fair or impartial consideration of the charges against them at the hands of the aforesaid grand jurors.”

Then it goes on—“Defendants, and each of them, demand that they be permitted to examine each and every one of the grand jurors of the particular array in this case and also the remaining members of the entire grand jury panel on voir dire hearing——” Well, this Court, as the record shows, would not allow a general voir dire hearing in that sense, but a substitute therefor occurred and in which these men upon the current panel appeared as witnesses and were examined as to their business status, as to whether or not they had any prejudices against the ILWU specifically or against the defendants particularly. And upon that examination, their answers were in the negative—that they had no prejudices one way or the other—and no fact was adduced by any extraneous evidence on the part of the movants that any one of these jurors had in the course of their conduct as citizens in this Territory abused any of the privileges of any of the

defendants in the class which Counsel says they belong to, or had in any way been subversively obedient [552] to strings pulled from any employment that they as jurors were participants in.

Each of the defendants took the stand. There was no bar on the part of the Court. Counsel examined them as he saw fit. No fact from any of the lips of any one of those witnesses was elicited or attempted to elicit that they had been abused by the conduct of either the individual grand jurors or any of the companies which they may have been employed by. There was no bar put by the Court to listen to any fact indicating that any of those jurors were lying in connection with these defendants.

But another peculiar fact that I must mention in passing in connection with these challenges—an affidavit by Mr. Maile. Mr. Maile took the stand, and of course it is obvious that the language of the affidavit is not his. I compare the language of the affidavit with the type of testimony that he gave, but be that as it may, the Court is aware of the fact that Counsel has to put into legal language, or thinks he has to put into legal language, the kind of thing that a man complains of about his fellow citizens. But no one of the other defendants was in any respect asked whether or not there was anything in Mr. Maile's affidavit that they themselves knew of or wanted to be participants of. It is only Mr. Maile who assumes to talk for them all.

I mention it in passing to indicate perhaps for somebody who may read the record hereafter what the [553] background of this challenge really is. But by reason of the fact, perhaps, of the shortness of time, I won't hold it against Counsel for the Defendants nor regard it as a waiver of the challenge in that respect in the matter, but consider as though it is part of the whole, although the argument has been addressed practically conclusively to the question of the way this grand jury has been selected as a complete jury list for the ensuing term. But it might very well be considered by any other court ruling upon this that the absence of argument before me amounts to an abandonment of any question as to whether these particular jurors who have been examined have shown by their answers or by any of the evidence to be prejudiced against these defendants.

I am passing from that point now to what has really been argued, and that is that the way of the drawing of the panel is as a matter of law unconstitutional, and the defendants have a right to have the panel dismissed and a new panel list drawn. Now, what are the facts? The facts, in summary, are that commencing last July some time, the Jury Commissioners sent out questionnaires to nineteen of the thirty-four or thirty-three precincts, or whatever it is, of voting precincts in this jurisdiction for the purpose of becoming informed, *prima facie*, as to what the qualified personnel was for both trial and grand jury service. The missing

precincts to which questionnaires were not sent out last year were [554] covered in two other ways by the evidence before the Court. One was that there were questionnaires from previous years. The other was by reason of the precincts being more closely connected with the region of the court house, the personnel was better known and more widely known by all the Commissioners as to qualifications. And when those lists came in, and with the other lists available to them and other information available, the Commissioners sat down in frequent meetings and went meticulously over the questionnaires and the other material and attempted, first of all, to draw up an unquestionably qualified personnel out of that complete array of data. Those who were not apparently qualified from their questionnaires, or whose reputation in the community were not really known, were set aside for the time being. Now perhaps it is unfortunate that in the clerical set-up of that summary, the word "questionable" is used, but I think the evidence clearly discloses from the lips of Judge Wirtz that that was simply a nomenclature used to differentiate from the unquestionable list those whom they needed further investigation for. That was the only purpose of that division. And also out of the list grew the other sections of the list—those who were clearly exempt, out of the jurisdiction, over age, sick, and so on, or for some reason or other were not from that standpoint qualified or available—either one.

Now, what did they do, these Jury Commis-

sioners? [555] Select their personal friends? The answer is no, and Counsel knows it. The use of the term, "people I know," means that they moved around the community and gathered information to know what the reputation was.

What did they do next? They took the voting list as a fair starting point of the different precincts and divided the percentage—fifty names to be chosen—and the total number of voters, not those total number of available they had been able to segregate out of this preliminary process, but the total number of voters and gave an approximate percentage so that each precinct would have its proportional representation.

Now, geographically, there is no question about the fact that this jury is a representative jury, proportionate to the electoral vote, regardless whether that electoral total is completely qualified or not. But they adopted a method to distribute the selection over the Island geographically and proportionately.

And then what did they do next? They examined the list, according to the evidence, in each of these precincts in respect to the number to be selected out of that precinct. If the precinct was entitled to, well, let's take one. I think it is Lanai that was entitled to two. Mr. Clerk, may I have that Grand Jury list? Court's Exhibit 1, I think it is.

(Clerk handing exhibit to the Court.) [556]

The Court (Continuing): I am getting my in-

formation in this regard from the Court's Exhibit No. 1—that on the Island of Lanai, 1st precinct, their proportionate number was two. And on that proportionate number, they took a gentleman by the name of Mr. Eldredge and a gentleman by the name of Mr. Onuma. From the name of the second, I would presume that Mr. Onuma is Japanese—Toshio, I think, is his first name—having satisfied themselves that those two men had the feel of their precinct.

We go to the next place, the 2nd precinct, Honolulu—and they selected Mr. Alfred S. Burns. Now, Mr. Burns is complained against, apparently, because he is a caucasian and that the district out of which he is picked there are a lot of laborers, an over-balance of workers, say Counsel, of the pineapple company. Well, I know of no principle which nominates that out of any given precinct any proportionate racial decision must be made in view of the statute that there shall not be a racial discrimination. “Without reference to race or place of nativity,” says the statute.

What was the basis of decision as I can gather from a combined and digested evidence of the Jury Commissioners and the whole situation? That apparently Mr. Burns, having to work with laborers, would have some knowledge of their problem, some feel for it. He would [557] have to if he wanted to live peaceably in that precinct. The fact that he was not of their social, ordinary table companionship isn't the point. The question is did he under-

stand the problems of the 2nd precinct and the population thereof within which he must live? Could he understandingly represent his neighbors? Well, I think that that is a rational, understandable, permissible method of choice in connection with a given person living in a given precinct.

And so they went down—I won't go over the whole list—and so they went down the list, and in some precincts, they picked Portuguese; and in some precincts, they picked Japanese; and in some precincts, they picked Hawaiians, part-Hawaiians, Chinese—they go through the list and try to pick out persons who have a feel for the problems of their precinct. That is the problem which the statute places upon their shoulders.

I don't know how we are going to literally construe and technically argue about this juggling with words, but the requirement of the statute in connection with the jury commissioners' duties is contained in Section 9800. I am not reading it all, but this particular language:

“All of such selections shall be citizens whom the respective commissions believe, after careful investigation in each case, to be qualified and not exempt under the provisions of this chapter. If practicable, no person shall be selected who has served as a juror or grand juror within one year.”

I underscore the word, “served.” [558]

“All of such selections shall be made without reference to the political affiliations or to the race or place of nativity of citizens, with a view to obtain lists representative——”

I underscore the word, "representative."

"—of the qualified citizenry of each circuit."

What do we mean by "representative"? I know that decisions use the word, "cross section." You can make argument on various lines on the technical abstract meanings of "cross section." "Representative" gets a little bit closer to the problem.

We are concerned, gentlemen, with the—I don't want to leave out Mrs. Bouslog—ladies and gentlemen, with the problem which is human, personal, not which is—how many bags of oats and how many bags of wheat and how many porkers can we deliver to the slaughter house, the ordinary realm for the statistics of goods. I am sorry, but I can't go along with this statistical proposition except as it may show that there has been a deliberate, purposeful omission on the part of persons who have been given a duty not to consider and to exclude from consideration for some reason. But the statistical part of it to my mind is unhuman or inhuman. The problem is personal.

"All of such selections shall be made without reference to the political affiliations or to the race or place of nativity of citizens——"

And yet the funny part of this whole argument is that their basis is race, their basis is percentage of races; and these Jury Commissioners have gone into it from the [559] standpoint of the basis of human beings who have the confidence of their different precincts, who have an understanding of the prob-

lems of the inhabitants of their different precincts, and I don't know of anything that bars the manager of a business from knowing what the workers that he has to work with and deal with—what their different problems are in a community such as Maui. It may be different on the Mainland where they don't mix with the people and one another in so many races as they mix with of necessity in this jurisdiction. I don't know about that. I am judging from the standpoint of this Island and these Islands. And for this Court to impose an abstraction upon the Jury Commissioners who have devolved upon them a human problem of getting a representative group who will care for the welfare of their neighbors, and, knowing it, they find men of all the races except, Counsel has pointed out, the Filipino—. Well, I don't understand that a person cannot understand a Filipino unless he is in a Filipino body. I think that a man who has to work with these good Filipino workers from day to day and sees the way they approach their problems might get a very good understanding of what motivates their actions and be ready to protect them from themselves and from each other by the use of the knowledge that he thus gained.

And to say that these Jury Commissioners have not attempted in the variegated possibilities that are before them to make a representative group out of fifty [560] men from six thousand odd qualified people is something which would mean that Jury

Commissioners, trying again, would be up against the same kind of technical abstraction when somebody didn't like the fact that they had clients who didn't want to go to investigation.

I don't think it is necessary to say any more. From the record in the case, the challenges are denied specially and in their total presentment, and the proceedings in this or any other cases lying before the Grand Jury that are considered in this jurisdiction may go forward.

Mr. Resner: May it please your Honor, we take an exception to the Court's ruling in all its aspects and with regard to each of the challenges and motions.

The Court: The exceptions are noted and allowed. There being nothing before this Division on these motions or upon the substitute assignment that I am fulfilling, my tour here is ended.

(The Second Circuit Court adjourned at 3:45 p.m.) [561]

I, Ivy W. Parks, do hereby certify that the preceding pages, numbering one (1) to five hundred and sixty-one (561) pages, inclusive, are a full, true and correct transcript of my shorthand notes of the testimony and proceedings had in the matter of Territory of Hawaii vs. Abraham Makekau, et al., Defendant's, Criminal No. 2412 and Territory of Hawaii vs. Diego Barbosa, et al., Defendants, Criminal No. 2413, at Wailuku, Maui, Territory of Hawaii, on September 15th, 16th, 17th and 18th, 1947.

Dated at Wailuku, Maui, Territory of Hawaii,
this 24th day of November, 1947.

/s/ IVY W. PARKS,
Official Reporter, Circuit Court, Second Circuit,
T. H.

[Endorsed]: Filed Jan. 28, 1948.

Item 85.

[Note]: Record of the proceedings before
Young Wa, Acting District Magistrate of the Dis-
trict Court of Lanai on the preliminary hearing had
by the plaintiffs Agliam et al., is the same as exhibit
K, filed with defendants' motions of January 14,
1948. Set out on pages 138 to 323 volume I Civil
No. 828.

In the United States District Court for the
Territory of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a Voluntary,
Unincorporated Association and Labor Union,
et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., Individually and
as Attorney General of the Territory of Ha-
waii, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

In the above-entitled case, held in the United States District Court on December 10, 1947, at 10:00 o'clock a.m., on order issued December 1, 1947, directing defendants to show cause why a preliminary injunction should not be entered, return of defendants to order to show cause, and motion of defendants to dissolve temporary restraining order,

Before: Delbert E. Metzger, Judge, U. S. District
Court, Honolulu, T. H.

Appearances:

HARRIET BOUSLOG,
Appearing for Plaintiffs;

MYER C. SYMONDS, Esq.,
Appearing for Plaintiffs;

RHODA V. LEWIS,
Assistant Attorney General,
Territory of Hawaii,
Appearing for Defendants;

WENDELL F. CROCKETT, Esq.,
Deputy County Attorney,
County of Maui, T. H.,
Appearing for Defendants.

(After Argument)

The Court: Well, I think I am going to put in a month or so mulling over this matter and going over briefs. I have heard the arguments. They have been quite complete. And I think I know this much about the situation, that there are rather difficult and very important matters involved in this case. They ought to be settled definitely and finally for the good of the people living here. And it appears to me that the only way they can ever get settled finally is by the decision of the Supreme Court of the United States. It may be that the quickest way to get it there would be through a three-judge court

in this court. I don't know that that is so because it might turn out, that the Supreme Court would say that the three-judge court isn't justified here, that we are not entitled to have a three-judge court in the Territory under any consideration. I don't know. That matter is open to different views. It hasn't yet been submitted to the Supreme Court. I'm sorry there has been as much delay as there has been in getting to that question. I feel that there is sufficient involved here and there is sufficient set-up in the complaint to justify its retention before the court. And for that reason the motion to dissolve is denied. And I don't know any way, in view of the position the court here took in the Chinese Language School case, to deal any further with this case than to assign it to a three-judge court. I think that it ought to be tried out on the merits of law by a three-judge court and while this Court has no authority, as I believe, to do anything further than to continue a temporary injunction and apply for the organization of a three-judge court. That I intend to do. [2*]

Mr. Symonds: Your Honor, will it be necessary to make a slight change in the form of the temporary restraining order in view of the information given to the Court this morning by Mr. Crockett? In the last paragraph which now reads, "It is further ordered that pending the hearing of the order to show cause that the Defendants Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, Ingram M. Stain-

* Page numbering appearing at bottom of page of original certified Transcript of Record.

back, individually and as Governor of the Territory of Hawaii; E. R. Bevins, individually and as County Attorney for the County of Maui; Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, and the agents, representatives and deputies of said defendants, and Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui, be and they are hereby restrained and enjoined until the further order of this court from presenting or submitting the charges as aforesaid"—now, the "aforesaid" refers to this unlawful assembly statute—"against said plaintiffs to the said grand jurors of the County of Maui." Now, the said grand jurors, they will be out of office the end of this month and therefore the plaintiffs now move that the order be amended by adding to the said grand jurors of the County of Maui, adding the words "or to any grand jurors of the County of Maui." That would prevent the submitting of this question of the statute. Otherwise the whole purpose of the decision would be defeated. The restraining order is only against these people presenting it to the said [3] grand jurors who are the ones named in the complaint. What we want to do, to restrain these defendants from presenting these particular charges to any grand jurors pending the determination by this three-judge court. So the addition of those six words "nor to any grand jurors of the County of Maui" would prevent the submission of any charges of riot or unlawful as-

sembly under that particular statute which is under attack.

The Court: Well, I am of the opinion that the first order, that order that was issued, was not lawfully issued, for the reason that at the time it was issued you hadn't in your petition, you hadn't complied with the requirements that would entitle you to that order, a thing that was overlooked by the Court in the haste of the situation. That was 8:00 o'clock the following morning that the grand jury, 8 or 9 o'clock, perhaps 9 o'clock, the grand jury would be called, that if anything was done it was necessary to get it to them before that time. I think that an amended temporary restraining order should be issued as of this date.

Miss Lewis: If the Court pleases, could we be heard on this proposition of applying it to any grand jurors? I think that would be highly improper. Unless they strip out of the complaint the charges against the grand jury and amend it, it will only be attacking the statute and that is what the case is about. I don't see how they can enjoin us from presenting the case to any grand jury.

The Court: Well, I assume, of course, he means the grand jury attached to that court, the circuit court. [4]

Miss Lewis: Yes, but it has a lot of stuff in here about this matter in which this grand jury was impaneled, and so on. Now, apparently it has to be dropped out of the case and the whole question is the constitutionality of the statute.

The Court: That is what it would resolve itself to. Yes, that is a fact.

Miss Lewis: Well, I think that should all be accomplished at the same time. It should be stripped down if this order is going to be changed.

Mrs. Bouslog: That isn't true until and unless the present grand jury is dissolved and ceases to exist. And that to have a temporary restraining order it must be to hold the status quo pending the convening of a three-judge court for the purpose of testing the constitutionality of the statute.

The Court: I don't want to sign any order contingent upon something that possibly may never happen. I don't know. I assume that it is entirely feasible to organize a three-judge court but I am not certain of that. I don't like to make an order depending upon it, upon the creation of a three-judge court. I don't just know how to limit it as to time. But I always hesitate to make any order contingent upon the happening of something else if the happening should be a certainty.

Mr. Symonds: Your Honor will notice that there is no restraining order here against the grand jurors. We discussed that with Your Honor. The grand jurors, the present grand jurors are not restrained. [5]

The Court: Yes, that is so. I think I insisted on your taking that out. It is only the enforcing officers. The grand jury isn't likely to operate without some law enforcing officers coming before it. They may have time to somewhere else but they

don't do it in the Territory of Hawaii on their own initiative.

Mr. Symonds: So the only modification we are proposing is that the restraining order prohibit these enforcing officers from presenting it to the said grand jurors. Now, the said grand jurors are those who are named as defendants. So therefore modification by simply adding "or to any grand jurors of the County of Maui" just simply ties the hands of the enforcing officers so that they wouldn't until this passes upon the issues be able to present this charge, any change of coming until the statute which is being attacked as unconstitutional to any grand jury over the County of Maui. And Miss Lewis says she objects to that because there is a lot of language in the complaint and other things other grand juries—Well, all those issues will be passed upon at the right time when she files her pleadings and any supplemental pleading.

The Court: As soon as this grand jury goes out we will weigh the purpose of passing on the merits of this grand jury.

Mr. Symonds: Well, that will be in issue, Your Honor, and that will have to be passed upon when that happens.

The Court: Unless there is some specific objection as made to the qualifications of the next grand jury, why you can't anticipate that you are going to have any trial, whether it is lawful or not. [6]

Mr. Symonds: That is right, Your Honor, but as Mrs. Bouslog says, at the present time we do have

this grand jury. They are still sitting there. They can do anything they want before the first of the year. We don't know whether they are going to be called the first or second or the tenth. Therefore, it is necessary to have the order read the way it is now with the addition of these words so that Your Honor can protect us so that if a new grand jury is sworn in it won't indict these men under alleged unconstitutional statutes.

Miss Lewis: If the Court please, the court suggested that the thing should not be anticipated. If the grand jury panel goes out and another one comes in, there will be time enough and then they can strip the complaints down to what is not moot at the same time that the order is changed. And that would be the proper way to proceed.

The Court: Yes. Well, I feel this way about the situation, that the Territory or the enforcement officers just aren't suffering any detriment. These men are under bond, I understand. Indications are, from this one specimen here that is shown, that they are under a thousand-dollar bond. And I feel that it is well enough to delay that matter of prosecution until the essentials of this complaint can be heard. And in view of the position the Court took in the Chinese Language School case there is just no other way that we can proceed in this case except through a three-judge court. So that I shall make the best and speediest effort I can to create, organize, assemble a three-judge court to hear and try the petition on its merits. [7]

Miss Lewis: Do I understand that the temporary restraining order will be reissued in its present form then?

The Court: Well, approximately the present form, with the addition that it would have to in all reason carry the additional prohibition to any next coming grand jury.

Miss Lewis: Well, if the Court please, I don't feel that is proper at this time, because this case is directed against these grand jurors. And if that becomes moot then that should be dropped from the complaint at the same time that the order is made instead of as anticipated. Perhaps the judge will be able to get a three-judge court here before the second Monday in January. That is the date the term changes. I should doubt that but you see the situation is that the court would sit in if an oncoming grand jury, a new one, would come in and be called and indict these fellows under this statute that is being attacked.

The Court: Well, if the case is presented against the statute and that is the substance of the case, I think that the complaint should say so and not carry all these additional allegations about these other grand jurors. I mean the allegations—they are only on this particular grand jury.

Miss Lewis: Well, if that is the Court's feeling in the matter, I feel that we are left with a complaint loaded up with a lot of stuff. In other words, if they are assuming that this is going to become moot as to the particular grand jurors, which they

seem to assume, and they ask the court to change the order, then at the same time they should take all those other allegations out of the complaint. That is accomplished, I think. [8]

The Court: Well, with that order, with an order forbidding this grand jury to deal with anything, to have it presented to them, it is just as well to take it out because their interest in that grand jury so far as this case is concerned would be at an end. It is just as well to take it out now. As soon as we get an order of restraint against that grand jury, this present grand jury, from proceeding any further—what they want, I don't know that they have specifically prayed for it, etc., but what they want would be to keep an incoming new grand jury from indicting these men under this same statute, which they still insist, notwithstanding the Supreme Court decision, is unconstitutional.

Miss Lewis: Well, I don't want to keep you. I know it's awfully late. Here is the point. They have asked to add a reference to a grand jury that hasn't even been impaneled yet on the theory that the three-judge court wouldn't be assembled in time. And if that is true, and that is their theory, at the same time they should take out of the complaint the attack upon the grand jury as such, because that is all going to become moot. In other words, the proper thing would be, if the Court is going to continue this restraining order, notwithstanding our objections—And I am not going to burden the Court with more argument about that—to come in, if this grand jury

does, or is about to go out of office, and change the order so as to apply to another grand jury and at the same time admit that it is moot as to the grand jury part of the case, and let [9] the record get straightened out on that. Otherwise, we will just have a terrific time to get that settled, that it is moot to that part.

The Court: I rather lean to that view myself but I don't know that they need, but they ask for, they might need for a restraint against this present grand jury as long as it is in office.

Miss Lewis: Well, that the Court gave them, as I understand.

The Court: I didn't give it. Today, I don't know if it is the date, but not more than ten days that that temporary order runs.

Miss Lewis: Well, I don't know whether I understand correctly. I objected to the Court continuing it and asked the Court to dissolve it. What was the Court's ruling of that?

The Court: The motion was denied, although I confess that from one point of view, and perhaps a sound one, that the order of injunction wasn't lawful and binding from the date it was signed because it wasn't based upon a complaint sufficiently complete to authorize the Court to issue an order. But that could have been cured. Of course, it could have been just simply extra work, to make a specific attack on that, because before there was any answer or any motion to dissolve it the complaint had been cured by amendment. And I would have

felt obligated to have simply issued a new temporary restraining order. So that seems to me, like that is water under the bridge. And in order to temporarily [10] restrain until we can get a court together I suggested that a new restraining order be issued. I think that restraining order should cover the present grand jury and any other following jury until the three-man court can deal with it. It wouldn't have any force unless it did——

Miss Lewis: Well, I guess the Court has ruled on my point, then. My point was that as far as another grand jury goes, that is anticipatory. It is entirely improper. The complaint was filed, talking about this grand jury. And I think the whole thing will be confused by the Court putting in a reference to some other grand jury that isn't even mentioned in the complaint because the Court is seeking to anticipate as the fact that those issues as to the grand jury may become moot and they should be stripped.

The Court: It would be moot as soon as that grand jury is dissolved. Now, whenever that happens, if the petitioners don't voluntarily remove that from their complaint, the issues that they raise, so far as I am concerned, assuming that I am one member of the three-man court, I will certainly be in favor of striking it from the complaint because it would be moot. There is no use trying to get the Court to deal with some dead issues.

Miss Lewis: Well, that is not so simple, Your Honor. We have to file our motions and answers, and so on, at the proper time. And how are we go-

ing to move to strike something when it is moot, and so on? I think that by anticipating this Court is complicating the whole matter. The proper thing would be, at the time the term is about to change for the plaintiffs to come in and get the order [11] changed, if the three-judge court has not yet met, and at the same time admit that that is moot and have it taken out of the complaint. So that we at least have accomplished something.

The Court: I think they should do that. That is, when this grand jury goes out, when it is succeeded by another, and you know that you are not dealing with this grand jury that you are complaining about, then I think you should remove it from your complaint.

Mrs. Bouslog: These issues that would be moot would be, whether they were in fact stricken from the complaint, would not be considered by the Court in any event.

Mr. Symonds: We can always come in and file a judgment of mootness at the proper time. I think counsel is unduly alarmed as to what is happening here. I don't think any rights are being prejudiced after January 2nd, or whatever it is. She can file any motions to dismiss or to strike anything she wants to as far as the pleading is concerned.

The Court: Yes, but who's going to consider it until we get the court organized?

Mr. Symonds: The motion will remain on trial.

The Court: The limitations are quite pronounced——

Miss Lewis: That is why, if the Court would confine its present order to the present grand jury which this complaint is talking about——

The Court: But that would leave you wide open.

Miss Lewis: I am not trying to put anything over. They can come in before the term is going to change, when it is about to change, and point out there is a different situation. Get that order changed and at the same time they would remove those moot parts from the complaint because that would be part of their application for a change in this order. And that would be to my mind the proper thing to do rather than talk about something that hasn't happened for one purpose and not for another. That is why I object to adding "any other grand jury" at this time. Let them add it at the proper time if that situation occurs and at the same time take this out of the complaint where it belongs.

The Court: I don't know how many temporary restraining orders the Court, this Court, one-man court might issue from now on but I don't want to take a chance on any further ones, having decided that it is a three-judge court proposition. I don't want to move on that.

Mr. Symonds: Your Honor, we will prepare an amended restraining order and present it to the Attorney General for approval as to form and then we can discuss it in the chambers.

The Court: That is the best way to do it. And in the meantime—well, you do that tomorrow.

Mr. Symonds: Yes, Your Honor, the first thing.
(Adjournment of Court.) [13]

I, Albert Grain, Official Court Reporter, U. S. District Court, Honolulu, T. H., do hereby certify as follows: that the foregoing is a true and correct transcript of proceedings in Civil Case No. 828, held in the above-named court on December 10, 1947, before the Honorable Delbert E. Metzger.

/s/ ALBERT GRAIN.

May 26, 1948.

[Endorsed]: Filed June 21, 1948. U.S.D.C.

[Endorsed]: Filed July 23, 1949. U.S.C.A.

In the United States District Court for the
District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a Voluntary,
Unincorporated Association and Labor Union,
et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., Individually and
as Attorney General of the Territory of Hawaii,
et al.,

Defendants.

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a Voluntary,
Unincorporated Association and Labor Union,
et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., Individually and
as Attorney General of the Territory of Ha-
waii, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

Before: Honorable Delbert E. Metzger, Judge;
Honorable John Biggs, Jr., Judge; Hon-
orable George B. Harris, Judge.

Honolulu, T. H., April 15, 1948

(April 15, 1948, 2 p.m. The clerk having called
Civil Nos. 833, 834, 828, and 836, the following
proceedings were had:)

Mrs. Bouslog: Plaintiffs are ready, your Honor.

The Court (Judge Biggs): Yes. Are all counsel
present?

Mr. Griffith: Counsel are present, your Honor.

The Court: For all the parties.

Before we proceed, ladies and gentlemen, the
Court desires to make a statement which is equally
applicable to all the cases, all four numbers.

In the *Mo Hoc Ke Lok Po v. Stainback* case the district court of Hawaii held that Judge Metzger, the United States senior district judge, might call to his assistance two other judges, one of them a circuit judge of the Ninth Circuit, the other the senior district judge of the Southern District of California, pursuant to section 266 of the Judicial Code as amended, to issue a preliminary and final injunction and to adjudicate the constitutionality of an act of the legislature of Hawaii.

That case, we are informed, is about to be appealed, probably to the Supreme Court of the United States.

Despite the fact that the *Mo Hoc Ke Lok Po* case at present is the law of this district, we conceive that the question of the applicability of section 266 to the cases at bar may perhaps be a doubtful one. Judge Metzger, however, is sitting as the senior district judge of this court and Judge Harris is sitting herein pursuant to a designation by Judge Garrecht, the senior circuit judge [15-B] of the Ninth Circuit, as am I, I having been designated to the Ninth Circuit by an order of Mr. Chief Justice Vinson.

Whether we sit as a three-judge court pursuant to section 266 or as three United States judges sitting en banc need not be presently determined, though it must be the subject of the greatest consideration by this tribunal in futuro.

We are in receipt of a brief filed by the attorney general, the attorneys for the defendants, which I

presume copies have been given to all parties, in which the attorney general takes the position that section 266 and the provisions thereof are applicable to these cases, though it is not conceded that the cases are of a type or kind which would move the discretion of this court to issue the injunctions sought.

As I understand the situation of the record, the state of the record in all of these cases, Judge Metzger has issued a temporary restraining order and at present the cases are coming on for hearing as to whether or not a permanent injunction should be granted.

We understand that there are motions to strike filed in the cases, and we consider that it would be appropriate to hear those motions to strike first. And we think that it would probably save time if we proceeded first with the motions to strike in Nos. 828 and 836, the International Longshoremen's & Warehousemen's Union cases, consolidating those for argument. And I think also we are of the opinion that the Reinicke cases [15-C] should be argued immediately thereafter, consolidating them since the facts in the respective cases are common points.

Motions to dismiss have been filed in all cases. Am I correct in that statement?

The Court: (Judge Metzger): Yes.

The Court (Judge Biggs): Therefore we think that you should proceed, the attorney general should proceed with the motions to dismiss in the two

cases which I refer to, the longshoremen's cases. And if counsel will do that we will appreciate it.

Are there any questions counsel desire to ask?

Mrs. Bouslog: Your Honor, I didn't quite understand the Court. Was the Court's intention that the attorney general proceed with the motions to strike as well as the motions to dismiss?

The Court: I want to make sure of the state of the record. Are there motions to strike?

Mrs. Bouslog: In all cases.

The Court: In all cases. Are there motions to dismiss in all cases?

Miss Lewis: There are, your Honor.

The Court: Is there any reason why the motions to strike and the motions to dismiss should not be proceeded with together?

Mrs. Bouslog: It would seem to me, your Honor, that the first case on the calendar is Civil No. 828, and I would have no objection to the Court's suggestion that that be consolidated with Civil No. 836, in which there [15-D] are similar issues. But I would suggest that both the motion to strike and the motion to dismiss, plus the hearing on the preliminary injunction take place in those cases first.

The Court: No. What I want to do is, what we want to do is get the motions to strike and the motions to dismiss out in both series of cases. Not only in the longshoremen's cases but also in the Reinecke cases.

Mrs. Bouslog: But it was your Honor's inten-

tion that the motions to strike and the motion to dismiss be argued together?

The Court: Unless counsel can see some reason why they should not be so argued.

Miss Lewis: No, your Honor. I see no reason why they should not. In 828 and 836 I think the motions are a more definite statement, and the motion to dismiss the action and for summary judgment in the alternative are all presented together.

The Court: Yes.

Miss Lewis: Might I make one more statement? Perhaps Mr. Griffith will want to elaborate. He is primarily handling 833 and 834.

As to the applicability of the three-judge court in Hawaii, we have submitted it does apply. But we feel these are not proper cases for a three-judge court. And 833 and 834, that is a really most serious case.

The Court: We have the petitions and we have carefully read them.

Miss Lewis: Yes. [15-E]

The Court: I doubt very much if at this time there is a great deal to be added to that phase of the case. Probably when the argument on the motions to strike and the motions to dismiss have been disposed of we may have further light on the question of the applicability of section 266, not only to 828 and 836 but possibly to 833 and 834 as well. At that point, if we desire further enlightenment we will ask counsel for it.

Miss Lewis: Yes, your Honor.

The Court: Mr. Griffith, are you prepared?

Mr. Griffith: There is nothing further to add on that.

The Court: Then will you proceed with the argument?

Miss Lewis: Taking up first Civil No. 828.

* * *

[15-F]

I, Carey S. Cowart, one of the official court reporters for the United States District Court, Territory of Hawaii, do hereby certify as follows: That the foregoing is a true and correct excerpt from transcript of proceedings in Civil Nos. 833, 834, 828 and 836, held in the above named court on April 20, 1948, before the Honorable Delbert E. Metzger, the Honorable John Biggs, Jr., and the Honorable George B. Harris.

6/28/48.

/s/ CAREY S. COWART.

[Endorsed]: Filed June 30, 1948 U.S.D.C.

[Endorsed]: Filed July 23, 1949 U.S.C.A.

[Title of District Court and Causes.]

(April 16, 1948. Excerpt from proceedings.)

Mrs. Bouslog: * * * While the penalty doesn't have anything to do, it not being a cruel and unusual punishment, I think it would indicate age, it is antiquated, its lack of enforcement, it is now thought it is a statute of pagan history that should

not be and would not pass the test which the Supreme Court has already laid down.

* * *

Judge Biggs: Before you read that I think that you might give us your view as to the very first section of chapter 277, that is, 11570, where there are three or more persons assembled together with disturbance, tumult and violence, and striking terror or tending to strike terror into others. What is the test which you conceive of, of being applied to the others? Are they reasonable persons, not likely to take fear because they see four people together?

Mrs. Bouslog: Well, the common law test was a man of reasonable—a reasonably firm man, not somebody who was easily frightened, but a man of reasonable firm convictions, was the test of whether or not he was terrified. So far as the complaint is concerned, there is merely an allegation that certain people were terrified. What were the manifestations of that complaint?

Judge Biggs: Not the complaint; you mean the indictment.

Mrs. Bouslog: By the indictment. Yes. The Supreme Court in its opinion, on terror—I think that was the common law test, and that is what the Supreme Court said, that this statute must be interpreted by reference to the common law. And unlawful assembly is the common law of England, which the Supreme Court has said was rejected by the First Amendment and which the revolution was fought to do away with.

Now turning to the conspiracy statute. It is our opinion that the conspiracy statute of the Territory is clear. That under the decision in the Screws case—Counsel for the defendant cited the Screws case to uphold their contention that it was valid, but as I interpret the decision in the Screws case, the decision in the Screws case held that statute valid for one reason only, and that was because of the particular interpretation placed upon the word “wilful”.

* * *

Certificate

I, Carey S. Cowart, one of the official court reporters for the United States District Court, Territory of Hawaii, do hereby certify as follows: That the foregoing is a true and correct excerpt from transcript of proceedings in Civil Nos. 828 and 836, held in the above named court on April 16, 1948, before the Honorable Delbert E. Metzger, the Honorable John Biggs, Jr., and the Honorable George B. Harris.

Jan. 25, '49.

/s/ CAREY S. COWART.

[Endorsed]: Jan. 25, 1949 U.S.D.C.

[Endorsed]: Filed July 29, 1949 U.S.C.A.

[Title of District Court and Causes.]

TRANSCRIPT OF PROCEEDINGS

of the above-entitled matter, on Monday, April 19, 1948, commencing at 2:15 o'clock p.m., before the Honorable John Biggs, Jr., the Honorable George B. Harris and the Honorable Delbert E. Metzger, sitting as a Three Judge Court, at the Federal Courtroom, Third Floor, Federal Building, at Honolulu, T. H.

Appearances:

Miss Rhoda V. Lewis and Robert B. Griffith, Esq., Deputy Attorney Generals, Territory of Hawaii, representing the defendants, and

Mrs. Harriett Bouslog and Myer C. Symonds, Esq., representing the plaintiffs herein,

Whereupon the following proceedings were had and done:

April 19, 1948, 2:15 o'Clock P.M.

The Court met pursuant to adjournment, all parties being present as before, whereupon the following proceedings were had and done:

Judge Biggs: During the noon recess Mrs. Bouslog asked permission of the Court to file a brief memoranda by tomorrow morning in respect to certain matters and cases that she had not brought to the Court's attention before we recessed. The Court gave her that permission, and, of course, will give you an opportunity to reply to it if you consider a reply necessary.

Now in respect to Civil cases 828 and 836, the Court makes the following statement on the motions to dismiss the actions in toto; motions for summary judgment in favor of the defendants, and, alternatively, that if the actions be not wholly dismissed, or if summary judgment be not entered for the defendants, the actions be dismissed as to certain of the defendants, and that the plaintiffs be required to make certain matters in the complaint more definite, and that the plaintiff be required to make a more definite statement of their claims, so as to state what your claim is founded on, and the separate transactions, and this is in both cases, Civil numbers 828 and 836.

As to those parts of the motions where it is requested that the claims set forth in the complaint be made more definite and certain, we are of the opinion that the protracted arguments of the last three days have demonstrated the defendants and their appeal counsel are fully informed of the nature of the complaint, and that no further precision or specification by the plaintiff is necessary.

These portions of the motions will be denied, and orders to such effect will be entered.

As to those portions of the motions going to the dismissal of the actions, as to particular defendants, respecting misjoinder, lack of jurisdiction, or otherwise, that portion of the motions going to the dismissal of the action, as to the Honorable Cable A. Wirtz, Circuit Court Judge of the County of Maui, the Court presently will express no opinion, and will

retain this part of the motion for further consideration and ultimate disposal at an appropriate time.

As to all other parts of the motion, the Court is of the opinion that they must be denied, and orders to such effect will be entered.

I might state, for the benefit of counsel that the orders have already been drafted and are in course of preparation.

We then come to the question of how we shall proceed in numbers 828 and 836.

Is what the Court has stated plain to counsel?

Miss Lewis: Yes, your Honor.

Judge Biggs: We, of course, still have the question of the applicability of Section 266. Probably we will let that go again, for the time being, though we will have to have, as we suggested before, something in the nature of a question and answer period respecting that.

The next procedure, I suppose, would be to have the plaintiffs go forward in support of their motion for a preliminary injunction, whether the proceeding is under 266, or by this Court sitting simply as a Court of three judges, or there is the alternative procedure, that perhaps the parties might agree, since the record will be very much the same in either instance, to proceed to a full hearing on the merits.

Mrs. Bouslog, you have the restraining order—What is your desire in the matter?

Mrs. Bouslog: Your Honor, it was my understanding that there was a consolidation, more or

less, of the two, of plaintiff's case for a preliminary injunction, combined with the resistance, or a motion to dismiss, and that in point of law the showing has been made; necessarily plaintiff's case has been made, insofar as the legal issues are concerned, in showing that there are substantial Constitutional questions involved, and that there are questions of serious nature, anyway. If counsel was incorrect in that——

Judge Biggs: We have expressed no opinion on the denial of the motion, Mrs. Bouslog.

Mrs. Bouslog: Yes.

Judge Biggs: And, of course, we will treat the cases as consolidated, if necessary, and I suppose we should make a formal order to the effect that the cases be consolidated for proof. We expressed no opinion regarding the legal issues beyond that necessarily involved in the denial of the motion.

So it is now your time to proceed and to present such evidence as you desire in support of a preliminary injunction, or if you and Miss Lewis can agree on the course to pursue, since in all probability that evidence in large part would be that which would be presented to the Court on final hearings, it is possible that you might go forward and present your case as if on final hearing.

Mrs. Bouslog: That would be quite agreeable to counsel for the plaintiff. Of course there is the matter of answer that is not——

Judge Biggs: Quite true; we will take up the matter of answer with Miss Lewis.

Mrs. Bouslog: If we had a time set so that we would know what is permitted——

Judge Biggs: Well, I don't desire—none of us desire—to unduly hurry counsel. Of course our time is limited, at least so far as two of us are concerned, on this visit to this Territory, and suppose we take up the matter this way, first: How long would it take you to present your evidence in support of the preliminary injunction in this case?

Mrs. Bouslog: I don't think it is necessary, your Honor. I think the Court perhaps misunderstood me. Plaintiffs prefer to go forward with the hearing on the merits, because we agree that there would be little difference between the evidence on the hearing on evidence to support the preliminary injunction, and the final hearing, and we would be willing,—we don't ask very much time; we waive that; if we had the usual amount of time——

Judge Biggs: How much time do you estimate you would need to proceed?

Mrs. Bouslog: Do you mean how much time between the filing of the answer and——

Judge Biggs: Well, I think we may perhaps be able to hasten the filing of the answer. It seems to me in passing that the parties might adopt the not unusual course of stipulating that the charging parts to the answer are denied, or something of that sort. How soon can you have your witnesses here, and how long would it take to present the case?

Mrs. Bouslog: If your Honors would take a

short recess, so as we may discuss the problem of transportation from the other Islands, we may I think——

Judge Biggs: Well, now, I assume that there is a great deal here in the complaint which would be admitted by Miss Lewis.

Miss Lewis: Yes.

Judge Biggs: And Mr. Griffith. Certainly the first few paragraphs, that so and so and so, of certain nationality,—if it be pertinent, would certainly, I assume, be admitted. Why not counsel get together? First, is there a counsel room in this building?

Mr. Griffith: The library is open.

Judge Biggs: I would suggest a conference between counsel at this point. We want to give every opportunity to the parties to submit their evidence, but we do not want to unduly protract the hearings and spend some days in going into a number of matters which should be admitted. If necessary we will embark here on something resembling a pre-trial procedure, in open court. Does that suggestion meet with your approval, Miss Lewis?

Miss Lewis: I wanted to answer, and I will make it very short, if possible. I am sorry Mr. Crockett went back to Maui. I will get him back here tomorrow. We will get our answer in under, I think, a couple of days, or around that. Would that be too much?

Judge Biggs: We don't want to limit you, but suppose we do this: Can't you give us an estimate, Mrs. Bouslog?

Mrs. Bouslog: I would think that it would take more than a day to put our evidence in.

Judge Biggs: You think it would take more than a day——

Mrs. Bouslog: I don't think it would take more than a day.

Judge Biggs: It is very hard to answer how long you would be in rebuttal?

Miss Lewis: Well, I think we would be quite some time, your Honor.

Judge Biggs: When you say "quite some time" what do you mean?

Miss Lewis: Maybe I do not understand the case properly at this point. I am just talking as I go along. I would think if we have to show all these circumstances which we have been discussing, on the facts, before we go to the merits; these incidents, so that the Court could understand fully what was proposed by the plaintiff to be done,—I mean, by the defendants to be done,—that is quite a sizeable job.

Judge Biggs: I doubt if it is as difficult a one as you may perhaps anticipate. Could you give us some illustration of what you mean?

Miss Lewis: In the District Magistrate's Court, when we presented our *prima facie* case, Mrs. Bouslog insisted that we have——

Judge Biggs: (Interrupting.) That record which was made before the District Magistrate, is there any reason, for example why that could not be stipulated into this proceeding?

Miss Lewis: I think that would be fine. That concerns 36 people; there are 11 others in that incident, and five in another incident, but we have their preliminary examination.

Judge Biggs: Would you have any objection to that course, Mrs. Bouslog?

Mr. Symonds: Your Honor, I think the best procedure is the one suggested by the Court. Our experience in attempting to stipulate with the Attorney General's office is that it has been difficult.

Judge Biggs: Well, difficult or not, I want you to try it in this case. I should think that there would be a very broad area in which you can agree, and the Court will take further steps, if necessary, to compel agreement in regard to matters which are merely trivial or repetitious.

Mr. Symonds: Then it would appear to be in order that we retire and try to find an answer to that question as to how broad that area is, and then we can come back and inform the Court.

Judge Biggs: Is there some convenient place in this building or do you have a convenient office? Could you go to the Attorney General's office?

Mrs. Bouslog: I think the library would be satisfactory, your Honor.

So far as the question that was asked, the question about stipulating to the introduction of the transcript—

Judge Biggs: Well, that transcript, of course, is a public document, and this Court is entitled to take judicial notice of it.

Mrs. Bouslog: No, sir, your Honor, the District Magistrate's court is not a court of record in the Territory.

Judge Biggs: This proceeding was before a district magistrate and there was a transcript made of it, and there were translations of it, were there not?

Mrs. Bouslog: Yes.

Judge Biggs: There were translations?

Mrs. Bouslog: It is all in English.

Judge Biggs: There was no shorthand taken, of the translations?

Mrs. Bouslog: Into Filipino—It is in English.

Judge Biggs: Oh, it is all in English, and it has all been transcribed?

Mrs. Bouslog: Yes it has, your Honor.

Judge Biggs: Well, it would seem to me that might well be a starting place for a stipulation, and how does it seem to you, Judge; does it seem so to you? The same thing would be true, I think, as with any other long record; that record is some 500 odd pages, of the proceedings before Judge Wirtz.

Judge Metzger: Yes, that would be.

Judge Biggs: That certainly is a matter in which the document is a public document, and one which we could take judicial notice of, and it might be that you might desire,—the parties might desire, to supplement that record in some way, but that should not take a great deal of time.

I am not quite sure, Miss Lewis, and I don't want to harass you with questions, because you have had no preparation on this subject,—but I am not

quite clear how far you would deem it necessary to go in respect to some of the matters that you might have in mind. We have referred to these proceedings before the Magistrate, if they could be stipulated in evidence, and this Court might consider them, why this would save time,—it would seem to me that a great deal of time would be saved and a great deal of needless repetition.

Miss Lewis: That would be perfectly correct. Of course there are the movies that were a part of that, that are not here; I could have them brought here.

Judge Biggs: What sized film are they?

Miss Lewis: 25 mm., but I recognized that is our problem.

Judge Biggs: You could show them?

Miss Lewis: We recognize it is our problem. It is our proof. It is a matter of time. It is hard for me to estimate because we haven't had a pre-trial. If that preliminary hearing, which involved 36 people, could include the 11, I mean, it could be deemed that they were also there at that hearing, that we would cover by the incident, that would be one thing; if they are going to insist that they are not bound by that evidence, you see, it would have to be proven over again.

Judge Biggs: Let's put it this way. I think a recess would be in order. Would you consult among yourselves and then inform the Court as soon as you have reached some field of agreement, or at least some definite area of disagreement. The Court

will stand in recess from 15 minutes to half an hour.

(Recess.)

Miss Lewis: I find we have made considerable progress, and we were greatly handicapped by Mr. Crockett's absence. Our office has been in touch with theirs, and there is a plane leaving Maui at 5:45, so I presume he could get on it, and then we will meet this evening, at 8 o'clock, and we ought to be able to report tomorrow. I suggest, if the Court would entertain that suggestion, that the Court give us an indication of the time we would have to prepare for trial.

Judge Biggs: Let me presently state my own position. I have reservations to leave for the mainland on Sunday, May the 2nd. Judge Harris hopes to be on the Lurline on May the 5th. If necessary, though I would hate to do it because of other engagements which I have on the mainland, in the 9th Circuit, and if reservations were available, I could probably move on to the mainland on a later date, but I am required to be in the East on May the 13th as I have to sit again in the Court of Appeals on May the 17th. So that I should very greatly appreciate it that the testimony in this case, the necessary testimony be taken, if it could be taken, by May 1st, or before, because I can see that counsel will desire some time for argument, even if they are going to file a written request for findings.

I think Judge Metzger's schedule is such he will make his schedule conform to ours as nearly as may

be. That is the time schedule with which we are faced. After the evidence is in, of course the necessity for pressing for time is largely eliminated. Of course the Court must and will render its decisions as promptly as it can.

Mrs. Bouslog indicated that she might need no more than a day, and have you any reason to revise that, Mrs. Bouslog?

Mrs. Bouslog: I haven't yet, your Honors. But of course we haven't gotten completely into the stipulation part of it.

Judge Biggs: Do you think you could get it all in in four or five days?

Miss Lewis: I know Mr. Crockett has a witness who is in and out on a ship.

Judge Biggs: You could take his deposition.

Miss Lewis: There are points like that I am simply not familiar with. If we can get him down here, we can report on it tomorrow.

(Conference between the Judges.)

Judge Biggs: Judge Metzger informs us that the Court will be prepared to go on tomorrow at ten, if that is agreeable with the parties.

Very well, the Court will stand adjournment until 10 o'clock tomorrow morning.

One other question. On this basis of the answer, I see no reason why it would not be entirely possible for you to enter a general denial to the charging parts of the complaint, by stipulation.

Miss Lewis: Well, what I would like to do is this, your Honor, insofar as we have stipulated, and

on matters we could stipulate on, yes, and then I would like to file an answer denying everything which we have not stipulated, and then I would like to add some further averments.

Judge Biggs: By way of answer?

Miss Lewis: In that answer, and that would complete it.

Judge Biggs: We will adjourn to 10 o'clock tomorrow morning.

(Adjourned to 10 a.m., April 20, 1948.)

Certificate

I Hereby Certify the above and foregoing, pages 1 to 11, inclusive, to be a full, true and correct transcript of the proceedings in the within-entitled matter taken on the afternoon on April 19, 1948, at the time and place herein set forth.

/s/ R. N. LINN,

Official shorthand reporter, 1st Judicial Circuit,
Territory of Hawaii, acting as Official Reporter.

Honolulu, T. H., June 27, 1949.

[Endorsed]: Filed June 28, 1949 U.S.D.C.

[Endorsed]: Filed July 23, 1949 U.S.C.A.

[Title of District Court and Causes.]

TRANSCRIPT OF PROCEEDINGS

(April 20, 1948. Excerpt from proceedings.)

The Court (Judge Biggs): Now, to come back

to the ILWU cases. May the Court inquire what progress counsel were able to make at your conference of last night?

Miss Lewis: Shall I start in?

Mrs. Bouslog: Yes.

The Court: I beg your pardon?

Miss Lewis: I was talking to counsel, your Honor.

The Court: My apologies.

Miss Lewis: And asking if it was all right with them if I spoke first.

We did meet last night and dictated a rough draft of a stipulation in one of the cases, which counsel on the other side had not been over. They are trying to polish it up before looking at it. And then the other one would follow. I also have a rough draft of an answer in the case. Of course, that is my own proposition.

As to the amount of time required for proof, as far as our own case is concerned I would like to ask the Court, if it is not improper, to ask for a ruling as to what is really an issue of law. Or would that be improper?

The Court: No, it is not improper. Of course, since this Court will try these issues, I see no reason why we should not endeavor to define them as well as we can.

Do you agree, gentlemen?

The difficulty sometimes arises that another court differently composed defines the issues and sometimes the court which tries the issues may regard

the issues as something other than the court which manipulated the pre-trial proceeding. So I think we would be justified in making an order defining the issues as well as we could.

Miss Lewis: Yes.

The Court: Or indicating them, at least.

Miss Lewis: Certain facts will be stipulated and certain exhibits introduced by stipulation, and then each party will have some proof. Among our proof will be as follows: That we would like to show the Court the circumstances of the three occurrences, two at Lanai, the one in 1946, and to show to the Court that the plaintiffs are held as a result of conduct that they were principals in, in those events.

Now my question is as follows: Is it material to these cases to offer proof of the identity of all these different parties as actually having participated? To my mind that would be proceeding to the trial of the criminal case, and it would therefore seem to me not material; that it would be enough to clarify the issue if the events were set forth, and if it appeared that the police were holding these parties in connection with certain circumstances, that that was their basis for holding them, and not to go into what would amount, I submit, to a trial of the criminal cases, as to whether they actually did these things, were there and were identified, and those who rushed forward, as an example, at the wharf on July 14, 1947. But we would be perfectly willing to go into all of that.

The Court: Let's see what your opponent's view

is on that. Mrs. Bouslog, what do you think about that proposition?

Mrs. Bouslog: As far as we are concerned, the defendants can or do not have to show the identity of each one of the defendants. Of course our contention is that they were engaged in peaceful activity.

The Court: You are not directly answering the question. In a trial it is of great assistance for counsel, as officers of the court, to in effect state with the utmost frankness,—and do not think I am accusing you of lack of frankness—what their view is.

Do you think the defendants would fail in their defense if they did not show the actual participation of all the plaintiffs in this action?

Mrs. Bouslog: In part I think that is material. That is, the wholesale arrest of a large group of people, when only a small part was involved, may possibly be involved. It is a part of our contention that the unlawful assembly statute as applied by the Territorial officers under color of law is particularly a threat to a labor organization. That is, a mass arrest during the middle of a strike.

The Court: It would have to be stated, of course, and I assume the officers would state that these persons were all actually arrested or under indictment.

Mrs. Bouslog: That we stipulate to.

The Court: The only question then remaining is proof of the extent of the participation of the

individuals? Are you able or would you be able to carry that down as to individuals, that you would stipulate as to their action in the course of those incidents?

Mrs. Bouslog: No. We couldn't stipulate as action, no.

The Court: Why not?

Mrs. Bouslog: Because there would not be any agreement between the parties on what the action was.

The Court: Let's see. Just a moment. It was stated in argument here that one individual had either been pushed off the dock or jumped into the water.

Mrs. Bouslog: He is not a defendant.

The Court: Isn't he one of the parties?

Mrs. Bouslog: No. We wouldn't concede that he was pushed off the dock. As a matter of fact, he testified in trial that he jumped off.

The Court: All right. He jumped off.

Mrs. Bouslog: That is shown in the transcript.

The Court: He jumped off. But someone threw pineapples at him. A very heinous effect in the Islands here.

Mrs. Bouslog: Terrible.

The Court: Do we understand that there were some pictures taken of this disturbance, motion pictures?

Miss Lewis: I think the pictures concern the July 14th, 1947 incident only. Isn't that right?

The Court: Not after?

Miss Lewis: Excuse me.

The Court: Surely.

Miss Lewis: There are some still pictures in another case, of the 1946 matter.

The Court: Miss Lewis, you I assume would go forward and attempt to prove that the individual plaintiffs had in fact taken part in those disturbances? Is that correct?

Miss Lewis: Your Honor, we can do it that way. It is just a matter of time.

The Court: How were you planning—

Mrs. Bouslog (Interrupting): Excuse me, your Honor. I might make this suggestion. We possibly could do this by stipulating that if certain people appeared, that is, police officers, that they would testify that they saw these individuals there. In other words, we will stipulate that if they would bring in these witnesses, these witnesses would testify that those people were present, or something to that effect.

The Court: Is there any question of fact presented there where the credibility of the witnesses would be involved?

Mrs. Bouslog: Oh, yes, definitely.

The Court: How could we test it unless we had the witnesses before us. Test the credibility? We would have simply a stipulation on a piece of paper.

Pardon me, Miss Lewis. I interrupted you. How were you planning to proceed in respect to this?

Miss Lewis: What I wanted to do, I wanted to show the Court occurrences, so that the Court would

be able to see, and we think we can prove that there was a time when peaceful picketing stopped and something else started. And that the evidence will also show that these parties are being held on the basis of evidence that they participated in that something else that started when peaceful picketing stopped. That is what they are being held for, or what the threat consists of, so to speak. But we would be perfectly willing to go on and go into what that evidence is: That they are being held, that they did participate in that something else that started when peaceful picketing stopped. We would be willing to go on. It is just a matter of the Court's time. And that is why I submitted the question. It would seem to me at that point we really would be starting to try the criminal cases.

But I submit it for the Court's ruling.

The Court: It is a question of degree, I suppose, and it is none the worse for so being. What you actually planned to do, I suppose, is to prove that a point was arrived at where peaceful picketing stopped, as you put it, and something else began?

Miss Lewis: There would be an eye-witness describe the occurrences in connection with that matter. I might say, as I mentioned to the Court, we have a witness who is not always in town. We are looking for him. But with the exception of that difficulty, the proof would be eye-witness proof as to what the occurrences were.

The Court: Would those eye-witnesses be able to identify particular plaintiffs?

Miss Lewis: They would be able to identify some, but if it was necessary to identify all there are a number of witnesses.

The Court: How many?

Miss Lewis: Perhaps Mr. Crockett should talk on that subject.

The Court: Mr. Crockett, how many witnesses do you conceive to be involved to bring your case down to the ground, so to speak?

Mr. Crockett: If we have to prove every particular point, if the Court please, we would have to have about fifteen witnesses.

The Court: How many?

Mr. Crockett: About fifteen witnesses.

The Court: Fifteen?

Mr. Crockett: I would say at least that many.

The Court: It would take how long?

Mr. Crockett: We would take perhaps three or four days. We could, however, give the Court, as Miss Lewis has indicated, a picture of what actually happened there through the testimony of at least one witness who was present at the Paia incident and who was also present at the Lanai incident, and he was the investigating officer that went to the incident at Lanai. If that were all that were required, if the Court please, it would only take us one day to bring that particular witness here, and perhaps one or two other witnesses, just to substantiate or fill in some of the details as far as testimony as to proof of the Lanai incident.

The Court: We are of the opinion that testi-

mony of that sort so offered would in all probability be sufficient to prove the defendant's case in chief, that is, the defense in chief. It might be necessary for further witnesses to be offered by way of rebuttal, or something of that sort. But we think that probably would be enough to indicate the defendant's position.

Miss Lewis: That is what we wanted to submit.

The Court: Yes. What is the next question?

Suppose you just remain seated.

Miss Lewis: Yes.

The Court: We are holding a trial conference. Just remain seated at the table. We will avoid all this getting up and sitting down.

Certificate

I, Carey S. Cowart, one of the official court reporters for the United States District Court, Territory of Hawaii, do hereby certify as follows: That the foregoing is a true and correct excerpt from transcript of proceedings in Civil Nos. 828 and 836, held in the above named court on April 20, 1948, before the Honorable Delbert E. Metzger, the Honorable John Biggs, Jr., and the Honorable George B. Harris.

6/21/48.

/s/ CAREY S. COWART.

[Endorsed]: Filed June 21, 1948 U.S.D.C.

[Endorsed]: Filed July 23, 1949 U.S.C.A.

In the United States District Court
for the District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union,
et al,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii, et al,

Defendants.

Civil No. 836.

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union,
et al,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii, et al,

Defendants.

TRANSCRIPT OF PROCEEDINGS

beginning April 23, 1948, before the Hon. Delbert
E. Metzger, Hon. John Biggs, Jr., and Hon. George
B. Harris, in the Federal Court, Honolulu, T. H.

Appearances:

BOUSLOG & SYMONDS, Esq.,
For the Plaintiffs.

WENDELL CROCKETT, Esq.,

RHODA V. LEWIS, Esq.,

ROBERT B. GRIFFITH, Esq.,
For the Defendants. [1*]

April 23, 1948

9:30 o'Clock A.M. Session

Upon the Clerk calling the cases, the following proceedings were had:

Judge Biggs: We can proceed.

Miss Lewis: If your Honor please, there are a few matters as to the state of the record that I would like to clear up at this time.

Judge Biggs: Very well.

Miss Lewis: As I understand it, the Court has reserved its decision in the application for the preliminary injunction and is hearing that application in consolidation with the application for a permanent injunction.

Judge Biggs: That is correct.

Miss Lewis: We made a motion to dismiss and for summary judgment with certain exhibits adopted or incorporated by reference. Since that motion

* Page numbering appearing at top of page of original Reporter's Transcript.

was denied, we ask the Court to consider all of that material as an objection to the application for a preliminary injunction.

Judge Biggs: The Court so orders and will so consider the material.

Miss Lewis: As to the form of the answer, it is my understanding that in view of the stipulations that have been entered into, the Defendants do not object to the form thereof insofar as a general denial of matters not stipulated [2] has been used in that answer.

Judge Biggs: In other words, in every respect where you are not specifically answering, you are entering a general denial to the petition.

Miss Lewis: Yes. I would like the record to show that that matter of form is not objectionable to the Defendant.

Judge Biggs: Have you any objection to the form in which Miss Lewis is preparing and filing her answer?

Mrs. Bouslog: No, your Honor.

Judge Biggs: Very well.

Miss Lewis: The next matter is a little longer. Perhaps the Court would like to have me hand it to the reporter and have it written into the record. The point is that in the stipulation it was agreed certain testimony taken before Judge Cristy and certain exhibits might be produced here. We reserved our objections and I want to put my objections into the record at this time.

Judge Biggs: Very well. Do they go to relevancy primarily?

Miss Lewis: Primarily, and also that in 836 we have Plaintiffs who could not make the challenges.

Judge Biggs: In 836?

Miss Lewis: We have Plaintiffs that did not make the challenges, that Judge Cristy heard. Shall I read my objections? [3]

Judge Biggs: I think if you offer them to the stenographer and let them be included, we will save time.

(Miss Lewis hands the Court and the reporter her written objections referred to, which document reads as follows:)

“Civil Nos. 828 and 836

Re Grand Jury

“Defendants object to the receipt or consideration of the testimony taken before the Honorable A. M. Cristy on the grand jury challenges made by Barbosa and others and the exhibits in that proceeding, on the ground that none thereof is material or relevant in these proceedings, and upon the following grounds:

“In Civil No. 828, the whole question of the composition of the grand jury is moot, and in any event the plaintiffs would have no recourse in this court until they had exhausted their remedies in the territorial courts and upon appeal therefrom.

“In Civil No. 836, there is no issue before the court because an attack on the composition of the grand jury cannot be made collaterally in federal court, and if not made in the territorial court at the first opportunity is waived. No such attack has

been made in the territorial court by the plaintiffs in Civil No. 836. Either plaintiffs have had an opportunity to present this issue in the territorial court and have waived it, or else they have had no opportunity and [4] can still present all contentions based on the constitution and laws of the United States, under the doctrine of *Carter v. Texas*, 177 U. S. 442. In any event plaintiffs must exhaust their remedies in the territorial courts and upon appeal therefrom.

“Defendants further object to the receipt or consideration in Civil No. 836 of the motions and challenges to the grand jury made by Barbosa and certain others, not parties in Civil No. 836, the orders and rulings of Judge Cristy in the proceedings held thereon, and the certificates or disqualification of Judge Wirtz and Order and Authorization to Judge Cristy, upon the grounds above stated and upon the further ground that the same are incompetent and immaterial in Civil No. 836, as they concern proceedings not taken by any plaintiff in that case.

“And defendants further call to the court’s attention that challenges to individual members of the grand jury are not involved in these proceedings and the testimony and rulings relating thereto have no materiality or relevancy here. We object to the receipt or consideration of such testimony and rulings on that additional ground, as well as the grounds already stated. This specifically applies to the transcript at the bottom of page 80 beginning

with 'Mr. Resner' to page 88, line 11; bottom of page 409, beginning with 'court' to page 419 where the direct examination of Kenneth Auld begins; [5] and page 551 beginning with the word 'secondly' to page 554, line 15, as well as other matters scattered through the transcript."

Judge Biggs: I assume you are making no objection on the ground of hearsay.

Miss Lewis: That is the point. The form of the proof is what we did waive, that the witnesses are not here, we waived that.

Judge Biggs: Any objection on the ground it might be hearsay? You waive the question of hearsay?

Miss Lewis: Yes.

Mrs. Bouslog: No, your Honor, not on the ground that it might be hearsay. We stipulated it could go into the evidence subject to all legal objections.

Judge Biggs: You object on the ground it is hearsay?

Mrs. Bouslog: Well, I don't object,——

Judge Biggs (Interrupting): It is to your interest, I should think, not to object. I am not quite clear as to the position of counsel on this. You are referring here to the testimony taken before Judge Cristy?

Mrs. Bouslog: Yes.

Judge Biggs: And Miss Lewis objects that some of it is not pertinent, some of it is not revelant to certain of the Plaintiffs in one of the cases. Is there

any objection [6] on the part of counsel on the ground that it is hearsay?

Mrs. Bouslog: No.

Miss Lewis: Well, your Honor, perhaps we had better clarify our stipulation. I understood we had obtained one. If it doesn't go both ways, I may have to take some of it back.

Judge Biggs: I think Mrs. Bouslog waives any objection on the ground it is hearsay testimony.

Mrs. Bouslog: Yes.

Miss Lewis: We are not talking about this grand jury matter, but we have some testimony taken before the district magistrate on Lanai, and I thought we had agreed.

Mrs. Bouslog: I am agreed as to that, too.

Judge Biggs: In other words, all relevant legal objections are retained except the Plaintiff's objection of hearsay evidence.

Miss Lewis: Yes, your Honor. I understand my complete and formal objections will appear in the record, which I submitted.

Judge Biggs: Very well.

Mrs. Bouslog: Why I raised the question, we stipulated that the transcript of the hearing before the district magistrate could be received with no objection as to form but subject to all legal objections. They made the same stipulation with respect to the transcript. [7]

Judge Biggs: And Plaintiff's legal objection is the objection of hearsay.

Mrs. Bouslog: The reason why I raised the

question, when your Honor said "hearsay" was that there are attached to the various returns of the Defendants an affidavit, for example, of Assistant Chief Freitas, describing clearly events that are hearsay. Now where evidence appears on its face in affidavit form that it isn't a part of the records, that is, the transcript, we did not intend to waive hearsay objections as to that.

Judge Biggs: I am afraid that leaves us in a rather bad state. Mr. Freitas is going to testify tomorrow.

Miss Lewis: I think we have a slight misunderstanding. We have not, in our stipulation, included the affidavit of Mr. Freitas. It is in the record as part of our motion to dismiss for summary judgment and now under the Court's ruling part of our objection in the preliminary injunction, but I recognize that it is not anything other than exactly that.

Mrs. Bouslog: That is all the question I had, your Honor.

Judge Biggs: Very well, we are ready to proceed. You were going to make a statement.

Mrs. Bouslog: As the Court knows, it is the Plaintiff's position that they are entitled to relief against the [8] Unlawful Assembly and Conspiracy Statute of the Territory, because it is on its face a restraint upon freedom of speech guaranteed by the First Amendment. It is the Plaintiff's contention that subject to a showing of irreparable injury that previous restraint inherent in the statute

itself entitles the Plaintiffs to the relief sought under the Unlawful Assembly and Conspiracy laws. However, since there has been much evidence introduced or put into the record of a factual nature regarding possibly some violations of law, I want to make it clear from the outset that it has never been the Plaintiff's position before any Territorial court, and it is not now the Plaintiff's position that any members of labor unions who are guilty of minor infractions of the law, such as breaches of the peace or obstructions of the highway or disorderly conduct, are not subject to prosecution on the same basis that any other citizen is subject to prosecution. But the technique of the use of mass arrest under a serious felony statute carrying a penalty of 20 years is not according to the working people of the Territory the protection to which they are entitled. I wanted the Court to understand from the outset what the Plaintiffs' position was and why we introduce the evidence that we introduce.

Judge Biggs: One other point I am going to bring up. The Court will enter a formal order consolidating these causes for trial, and counsel may treat that as having been [9] done. It will be prepared during the course of the day.

Miss Lewis: As I understand it, what I said applies to both cases.

Judge Biggs: Yes, certainly.

Mrs. Bouslog: Your Honor, I am prepared now to begin to call my witnesses. I want to get the

Court's instructions; is it proper for counsel to remain seated?

Judge Biggs: Yes, you may take your choice, remain seated, or stand if you desire.

Mrs. Bouslog: Thank you. The first witness will be Jack Hall.

JACK W. HALL

called as a witness by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please?

A. My name is Jack W. Hall.

Q. What is your address?

A. I live at 2955 Oahu Avenue, Honolulu.

Q. What is your occupation?

A. I am Regional Director for the International Longshoremen's and Warehousemen's Union, and have been since the first of June, 1944.

Q. How long have you lived in the islands? [10]

A. I have lived here since 1935.

Q. Did you have any connection prior to 1944 with the ILWU?

A. Except for a two-year period in 1942 through 1943 and part of 1944, I have been associated in one way or another with the ILWU since its organization in 1937.

Q. What organization did the ILWU comprise in 1937?

(Testimony of Jack W. Hall.)

A. It was a part of the Inter-Island Longshoremen's Association, an affiliate of the American Federation of Labor.

Q. What group of workers did it cover at that time?

A. Longshoremen and warehousing workers.

Q. In 1944 when you became associated, what was the union engaged in doing at that time?

A. The local union was engaged in organizing the sugar workers.

Q. Did you assist in this organizational process?

A. After I became associated with the union, I became intensively active in connection with that work.

Q. Will you tell the Court how the union brought into its membership the sugar workers and the pineapple workers in respect to the times they were organized and the times of the completion?

A. Well, the bulk of the sugar workers were organized during the latter part of 1944 and the early part of 1945. For the industrial workers, that is those connected with mill operations, either directed elections or consent elections [11] were conducted by the National Labor Relations Board. Those elections we won by, I think, a majority of something like 97% of all eligible votes cast.

Q. Does the ILWU represent all the employees or some employees of all the sugar companies in the Territory?

A. All except two small companies of Kauai, Gay and Robinson, and the Waimea Sugar Mill Com-

(Testimony of Jack W. Hall.)

pany, employing approximately 250 workers, I believe.

Q. Does the ILWU represent a majority of the workers of the pineapple industry in the Territory?

A. That is true.

Q. Are you familiar with the financial structure of the union and the amount of money spent in organizing the union?

A. Yes, I am. I am not too sure what you mean by "organizing." If you mean by,—

Q. Organizing and administration of the union.

A. I know that in the period from November 1, 1943, to November 1 of 1947, the international union expended in the Territory slightly in excess of \$350,000. We obtained that figure to present to the conference of sugar workers we held in Hilo early in January this year. It was prepared by our bookkeeping department.

Q. How much, what is the amount of money which it is necessary to have to administer the union for its purposes in the course of a year? [12]

A. If you mean by that the international union,—

Q. No, the local unions in the Territory?

A. Oh, I would say approximately \$600,000 to \$700,000.

Q. How is that money received? What is the source of that money?

A. The source of income is from a regular dues payment by the individual members.

(Testimony of Jack W. Hall.)

Q. In the islands?

A. In the islands, that is correct.

Q. So that a drop in membership affects the ability of the union to perform its functions?

A. Quite substantially.

Q. Can you give us a very brief picture of the wage structure or the wage situation in the Territory prior to the organization of the sugar and pineapple industry in the Territory?

A. Yes, I believe I can. I had opportunity to observe the figures, that is the wage rates that were being paid in the sugar industry as the result of my work on the War Labor Board and from personal knowledge. The so-called mill workers in the Territory in early 1945, before the first sugar agreement, were receiving a base pay of either 27½¢ in some cases and 28¢ an hour in other cases. In addition to that, they were receiving a 25% bonus based on the price of sugar, and together with that the so-called perquisites, that is, [13] housing, medical attention, fuel and water. The employees at that time were subject, some of them, to the Fair Labor Standards Act which provided for a 40¢ minimum.

The computations that were made by the industry brought the employees to the 40¢ minimum in most cases, but in some cases we found by suit that they were in violation of the minimum wage provisions of the law. As far as the field workers are concerned, the minimum rates were fixed under the

(Testimony of Jack W. Hall.)

Sugar Act of 1937 and set by the Secretary of Agriculture. They are matters of public record.

Q. (By Judge Biggs): Secretary of Agriculture of what?

A. Of the United States.

Q. Of the United States?

A. During the war years, I believe he was designated a war food administrator and signed in that capacity.

Judge Biggs: I see.

Q. (By Mrs. Bouslog): I show you a document that is entitled SD-169 War Food Administrator, Food Distribution Administration. Will you take a look at that and tell the Court what was the wage determination of the War Food Administrator for the sugar industry in 1943?

A. During the year 1943 the minimums were established on an average daily wage for a pay period of one month, which meant that on some days the wage could fall below that amount, and on other days it might be above, so long as at the end of the pay period it averaged this daily wage. The wage for adult male workers in harvesting operations was \$1.84 per day. For adult female workers it was \$1.38 per day. And in non-harvesting operations for adult males \$1.61 per day, and for adult female workers \$1.21 per day. And for work performed under so-called long-term contracts of cultivating and irrigation, an advance of not less than \$1.72 per day for male workers; \$1.29 for female

(Testimony of Jack W. Hall.)

workers, and for children between the ages of fourteen and sixteen \$1.15 per day. For operators of mechanical equipment, tractor drivers, truck drivers, railroad brakemen, 24½ per hour. Operators of mechanical railroad and harvesting equipment other than tractor, 32c per hour; railroad firemen and conductors 26c per hour; railroad engineers 36c per hour.

In addition to these base rates, the employees received a bonus of 1½% for each dollar that the price of sugar on the New York market rose above \$65. per ton. The average for the year 1944 was slightly below \$75. per ton. Pardon me, for the year 1943. That meant that the employees, in addition to these base rates, received approximately a 15% bonus and the so-called perquisites.

Judge Biggs: Do you propose to offer this document in evidence?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: Any objection? [15]

Mr. Crockett: No objection.

Judge Biggs: That will be admitted. It need not be copied into the transcript. Let it be marked Plaintiff's Exhibit No. 1.

(Thereupon, the document referred to was marked Plaintiff's exhibit No. 1 and received in evidence.)

(Testimony of Jack W. Hall.)

PLAINTIFF'S EXHIBIT No. 1

Issued June 25, 1943

WAR FOOD ADMINISTRATION

Food Distribution Administration

Sugar Branch

Washington, D. C.

Determination of Fair and Reasonable Wage Rates
for Persons Employed in the Production, Cultivation,
or Harvesting of Sugarcane in Hawaii
During the Calendar Year 1943.

Pursuant to the provisions of subsection (b) of section 301 of the Sugar Act of 1937, as amended, and Executive Order No. 9322, issued March 26, 1943, as amended by Executive Order 9334, issued April 19, 1943, the following determination is hereby issued:

Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in Hawaii during the calendar year 1943. The requirements of section 301 (b) of the Sugar Act of 1937, as amended, shall be deemed to have been met with respect to the production, cultivation or harvesting of sugarcane in Hawaii during the calendar year 1943, if all persons employed on the farm during that period in the production, cultivation or harvesting of sugarcane shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates not less than the following:

(Testimony of Jack W. Hall.)

(a) Wage rates during the period January 1, 1943, to June 30, 1943. For all work performed during the period beginning January 1, 1943, and ending June 30, 1943, the average daily wage for each laborer for each pay period (including bonus payments) as provided in the determination for the calendar year 1942 (S. D. No. 131, issued April 24, 1942), or the rate paid or the rate agreed upon between the producer and the laborer, whichever was highest.

(b) Wage rates during the period July 1, 1943, to December 31, 1943. For all work performed during the period beginning July 1, 1943, and ending December 31, 1943:

	Average daily wage for each laborer for each pay period (not exceeding 1 month) per 8- hour day.
(1) Harvesting operations; time basis. Cutting, cutting and packing, packing, packing and fluming, fluming, piling, hand loading and hauling sugarcane, laying portable track, laying portable flumes, and other harvesting operations not elsewhere provided for:	
Adult male workers.....	\$1.84
Adult female workers.....	1.38
(2) Non-harvesting operations; time basis. (i) Planting, cultivating, fertilizing, irrigating, brooming, ¹ and other non-harvesting operations not elsewhere provided for:	
Adult male workers.....	1.61
Adult female workers.....	1.21
(ii) For work performed under long term cultivation and irrigation agreements, an advance of not less than:	
Adult male workers.....	1.72
Adult female workers.....	1.29

¹So-called brooming done directly in connection with the operation of mechanical harvesting equipment shall be considered as covered under sub-paragraph (1). Other brooming is considered as non-harvesting for the purpose of this determination.

(Testimony of Jack W. Hall.)

	Daily wage per 8-hour day
(3) Children 14 to 16 years; time basis. For all work listed under (1) and (2) with maximum time of employment in any one day not to exceed 8 hours (shorter days in proportion).....	\$1.15
(4) Operators of mechanical equipment.	Cents per hour
Tractor drivers, truck drivers, railroad brakemen....	24.0
Operators of mechanical loading and harvesting equipment (other than tractors).....	32.0
Railroad engineers	36.0
Railroad firemen and conductors.....	26.0

(5) On a piece rate basis. For all work performed on a piece rate basis, the piece rates shall be the rate agreed upon between the producer and the laborer but in no instance shall the average daily wage for each laborer for each pay period be less than the time rate prescribed under this paragraph (b) for the applicable operations. Piece rates for the same operations shall be the same whether the work is performed by adult males, adult females, or children between 14 and 16 years of age.

(6) Wage increases. For each month during the period July 1, 1943, to December 31, 1943, both inclusive, the straight time earning of employees who are covered in this determination shall be increased by one and one-half per cent for each one dollar increase in the price of sugar above \$65.00 per ton. For purposes of determining the amount of increase, the average New York daily (including Sundays and Holidays) market price per ton of 96° sugar, Hawaiian basis, for the period beginning with the 16th day of the preceding calendar month and ending with the 15th day of the current calendar

(Testimony of Jack W. Hall.)

month, shall be used. These increases shall be applied to the earnings after the wage rates as outlined under subparagraphs (1) to (5), inclusive, have been complied with.

(c) Annual average payments for the calendar year 1943. Subject to the provisions of paragraphs (a) and (b), the annual average payment on each farm for all adult workers, excluding operators of mechanical equipment and workers who are paid a monthly salary of \$100 or more shall be:

	Per 8-hour day
(1) For work performed in harvesting operations.....	\$2.15
(2) For work performed in non-harvesting operations.....	1.61

In calculating the annual averages the earnings of adult females shall be given a weight of four-thirds.

(d) General provisions. (1) The wage increase provisions of this determination may, upon appeal to the War Food Administrator, be modified as to any producer who is able to establish that the payment of such increases, or any part thereof, will, under present wartime conditions, work an undue hardship on such producer, or seriously impede the production of sugarcane on the farm.

(2) If the producer and laborer agree upon a wage for any operation, or combination of operations, higher than that prescribed in this determination, payment in full of the amount agreed upon must be made to qualify the producer for payment.

(3) In addition to the foregoing wages of this

(Testimony of Jack W. Hall.)

determination, the producer shall furnish the laborer, without charge, the perquisites customarily furnished by him, such as a house, garden plot, and similar incidentals, unless the furnishing of such is restricted by military authority.

(4) The producer shall not, through any subterfuge or device whatsoever, reduce the wage rates to laborers below those determined above.

Issued this 25th day of June, 1943.

JESSE W. TAPP,
Acting War Food
Administrator.

Issued January 21, 1944

WAR FOOD ADMINISTRATION

Office of Distribution
Sugar Branch
Washington, D. C.

Determination of Fair and Reasonable Wage Rates
for Persons Employed in the Production,
Cultivation, or Harvesting of Sugarcane in
Hawaii During the Calendar Year 1944

Pursuant to the provisions of subsection (b) of section 301 of the Sugar Act of 1937, as amended, and Executive Order No. 9322, issued March 26, 1943, as amended by Executive Order 9334, issued April 19, 1943, the following determination is hereby issued:

(Testimony of Jack W. Hall.)

Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in Hawaii during the calendar year 1944. The requirements of section 301 (b) of the Sugar Act of 1937, as amended, shall be deemed to have been met with respect to the production, cultivation, or harvesting of sugarcane in Hawaii during the calendar year 1944, if all persons employed on the farm during that period in the production, cultivation, or harvesting of sugarcane shall have been paid in full for all such work and shall have been paid wages in cash therefore at rates not less than the rates established for the period July 1, 1943, to December 31, 1943, in the "Determination of Fair and Reasonable Wage Rates for Persons Employed in the Production, Cultivation, or Harvesting of Sugarcane in Hawaii during the Calendar Year 1943," issued June 25, 1943, except that the annual average wage per farm for all harvesting and non-harvesting operations combined, after payment of wage increases under paragraph (b) (6) of said determination, shall not be less than \$2.40 per eight-hour man-day.

In addition, the general provisions of paragraph (d) of the aforesaid determination shall apply for the calendar year 1944.

Issued this 21st day of January, 1944.

ASHLEY SELLERS,
Assistant War Food
Administrator.

Admitted.

(Testimony of Jack W. Hall.)

Q. (By Mrs. Bouslog): This shows for harvesting operations. Those are people not covered by the National Labor Relations Act, is that correct?

A. That is correct.

Q. That shows \$1.84 per day as of 1943 as fixed by the War Food Administrator. You say 15% bonus approximately was in effect at that time?

A. That is correct.

Q. Can you tell the Court what the approximate daily wage of plantation common laborers or plantation harvesters is at the present time?

A. Well, it is well in excess of \$8.00 per day.

Q. What was the purpose for which the International Longshoremen's and Warehousemen's Union was organized in the Territory?

A. Well, to improve the material well-being of the workers. That is in terms of improving their standard of living, to give them security in their employment both in terms of the [16] elimination of discrimination and favoritism and also for social reasons, such as improving their social welfare.

Q. How does the International Longshoremen's and Warehousemen's union attempt as a labor organization to achieve its purposes?

A. Primarily by the process of collective bargaining with the employers of the union members.

Q. What other means are available if negotiations fail?

A. Well, if negotiations fail, the usual practice is to attempt to obtain mediation or conciliation by

(Testimony of Jack W. Hall.)

some third party, and then an offer of arbitration, which we have made at all of our major disputes with the employers in this Territory.

Q. (By Judge Biggs): Is there any provision for arbitration in your contracts?

A. The only provision for arbitration in the contract is a provision for arbitration on disputes over the interpretation of the agreements. There is no provision for arbitration of any of the issues in dispute, but because of the consistent refusal of the employers to arbitrate in this Territory, despite the fact that it is the public policy both of the Territory as announced in the Act creating the Territorial Department of Labor and in Federal statutes, we have been left with but one alternative. When the union and the employers are unable to agree, there remains either for the union [17] to accept the employers' proposal, or to strike. There is no alternative.

Q. (By Mrs. Bouslog): Has any company or anyone in either the sugar or pineapple industry ever submitted to negotiations a question involving a wage issue?

Mr. Crockett: To which we object, if the Court please, as being incompetent, irrelevant and immaterial to the issues in this case. It is speculative.

Judge Biggs: We will overrule the objection. Of course, under the new Civil Rules, you do not need to note an exception. Answer the question.

(Testimony of Jack W. Hall.)

Mrs. Bouslog: Will you repeat the question, Mr. Reporter?

(The question was read by the reporter.)

A. You don't mean "negotiation," do you?

Q. No, I said has any employers in either the sugar or pineapple industry in the Territory ever agreed to submit to arbitration a wage issue?

A. No, they have not, even though we have had recommendations that such be done by government conciliators.

Q. So that the net result of a refusal to arbitrate is that the strike weapon is the only weapon which the union has available?

A. That is a correct statement.

Q. Now, you were Regional Director of the International Longshoremen's and Warehousemen's Union during both the [18] sugar strike of 1946 and the pineapple strike of 1947?

A. That is correct.

Q. During the pineapple strike and the sugar strike, did the Unlawful Assembly Statute of the Territory come to your attention?

A. They were applied against members of our union in both disputes.

Judge Harris: I didn't get the question.

(The question was read by the reporter.)

A. I have answered the question.

Judge Biggs: The answer was yes.

Q. (By Mrs. Bouslog): How did it come to your attention?

(Testimony of Jack W. Hall.)

A. Well, during the sugar strike a considerable number of our members were charged with the violation of the Unlawful Assembly Statute, and because I was in consultation almost daily with the elected strike committee, we were informed by the workers on Maui that the charge had struck almost, you might describe it as terror into the workers involved there, because they felt that for carrying on legitimate picket activity and to face a sentence of twenty years meant that everything was being thrown at them, and the strike could not be effective.

Following receipt of that information I went to Maui myself and consulted with the strike committee on that island and assured them that we would have our attorneys do [19] everything possible to contest the constitutionality of such a severe statute, and we were able to hold our ranks together at that time, although I must frankly admit today the situation was quite shaky on Maui. We were able to come through the strike successfully in sugar.

Q. Did it have any effect on the pineapple dispute?

A. I think it was perhaps the major factor which caused us to lose the strike. I was, in pineapple as in sugar, in all discussions involving around the strategy of the union from day to day, and when the strike leaders on Lanai were arrested along with a large number of the workers and faced with these severe penalties, the workers on all islands were very much affected and felt that it would be

(Testimony of Jack W. Hall.)

impossible to win the strike facing constant mass arrest, and therefore it became the judgment of the strike committee in which I participated that the strike should be called off at once until a determination was made on whether ordinary picketing could be carried on in this Territory without being subjected to severe felony charges.

Q. What is the effect on the membership of the union if a strike results in no gain to the union?

A. Well, obviously they become demoralized and lose confidence in the ability of the union to obtain gains for them or even to retain what they have gained, and we lose membership. [20]

Q. Calling your attention to the recent reopening of the longshore contract in the Territory, did the felony statutes have any——

Judge Biggs: Longshore?

Q. Did the unlawful assembly statute have any effect on the determination of what the union would do in that case? A. Yes.

Judge Biggs: Now you are going a little far afield, aren't you? Is that necessary in this case? Is it pertinent?

Mrs. Bouslog: Yes, your Honor, we are showing that as far as the union plaintiffs are concerned, that the whole union structure——

Judge Biggs: When you say "longshoremen" what do you mean?

Mrs. Bouslog: That is part of this same union.

(Testimony of Jack W. Hall.)

Judge Biggs: Yes, but would you define it to the Court, please?

Mrs. Bouslog: The longshore workers are a separate local of the ILWU. They have sugar workers, longshore workers, pineapple workers and miscellaneous and allied workers.

Judge Biggs: Very well, proceed.

Mr. Crockett: We object to the question because it calls for an opinion of the witness involving something that may happen in the future, or purely speculative.

Judge Biggs: I thought he was referring to a strike or a situation which had already come to pass. [21]

Mrs. Bouslog: That is correct, your Honor.

Judge Biggs: It isn't pertinent or directed to the future.

Q. (By Mrs. Bouslog): I mean in the determination of what the union would do in the longshore reopening, did the Unlawful Assembly Statute play any part in the discussions?

A. Yes, it did. The longshoremen under their present contracts with the waterfront employers had a recent wage opening and at that time attempted to raise the wage rates for longshoremen in the Territory to the wage rates on the mainland, the longshoremen in Hawaii being the lowest paid in any American seaport. The membership was extremely militated by the negotiating committee

(Testimony of Jack W. Hall.)

when it got together in the face of the employers' refusal to bring the wage structure up in the Territory and had to make a decision on whether or not to accept the employers' proposal or to strike, arbitration being refused, and in the discussion with the negotiating committee we had to come to the conclusion that it would be in effect suicide for the union to attempt to strike with such a statute hanging over their heads, a statute that could easily be invoked and has been in our opinion, or where there have been minor disturbances that might have been provoked by agents provocateur.

Q. Are you familiar with the housing situation on the various plantations in the sugar and pineapple industry?

A. Just what do you mean by that? [22]

Q. Are you familiar with the manner in which employees are furnished housing in the Territory?

A. Yes, in the sugar and pineapple industries, except for the Hawaiian Pineapple Company, the employees rent their houses from their employers, by and large. There are a few exceptions.

Q. How extensive is the system of company towns throughout the pineapple and sugar industry in the Territory? A. It is almost universal.

Q. And if an employee is discharged from the plantation is there any other housing available for him to move to on that island?

A. Usually not, unless he lives quite close to say

(Testimony of Jack W. Hall.)

a city like Wailuku or a city like Hilo, and I understand housing is a little bit difficult even there.

Q. Is there any other kind of employment for plantation workers in the Territory if they are discharged from their employment as plantation workers?

A. Well, today I think it is safe to say practically none. Many of the plantations have long waiting lists of applicants for employment, and there is no large industry on any of the outside islands that can absorb employees.

Judge Biggs: You say there is or is not?

A. There is not. We have had a great deal of experience in that connection in recent months on either the liquidation of plantations or the merging of the plantations where, because [23] of increased efficiency in operation less employees are required and men are laid off. One is the merger of the Grove Farm and Koloa on the island of Kauai where some 100 workers were separated from their employment. True, they were given severance pay in nominal amounts, but they were unable on that island to find employment, by and large. Many of those are workers that are far from, as they are described in the Territory, superannuated. Some of them are just around 40 years of age and can't get jobs and they are now on the relief rolls.

Q. The two incidents, Mr. Hall, involved in these cases were out of sugar and pineapple strikes.

(Testimony of Jack W. Hall.)

Will you describe for the Court the state of the negotiations between the parties at the time the strike occurred in the sugar industry in 1946?

A. Well, prior to the sugar strike in 1946 we had about twenty issues on dispute. I am not sure I can recall all of them, but the basic issues in dispute revolved around the wage question. We were asking for 65c minimum wage. That is exclusive of perquisites, a minimum increase for all employees of 18½c an hour, and the elimination of a differential on the island of Hawaii where workers have been receiving 21½c an hour less than on other islands. That was the major issue, and the others were subsidiary.

Q. What was the employer's last offer before the strike [24] took place?

A. They offered 61½c on a classification system that they insisted we accept, and finally a minimum of 5c per hour for all employees.

Q. Was a strike vote taken on the last employer wage offer before the sugar strike?

A. Yes, it was.

Q. What was the approximate percentage vote throughout the sugar workers in the Territory?

A. I think it was well in excess of 97% in favor of the strike.

Q. And what was the hourly increase in rate of wage per hour at the end of the 79 day sugar strike?

A. You mean average?

Q. Yes, the minimum.

(Testimony of Jack W. Hall.)

A. Well, I think the minimum cash increase that any employee received after payment of house rent and for his other perquisites, that is, fuel, water and medical attention, was 16½c per hour, but the average increase in the industry was in excess of 20c per hour after payment of housing and other perquisites.

Judge Biggs: Mrs. Bouslog, to fix the time, what are the documents?

Mrs. Bouslog: The documents are the 1947 agreement between the sugar industry of the Territory. It is an industry-wide [25] agreement, between the industry and the International Longshoremen's and Warehousemen's Union.

Judge Biggs: I think we are going a little too much into detail. We are trying constitutional issues.

Mrs. Bouslog: I was going to put them into the record to avoid going further into detail. I am almost through with him. This is a copy of a letter directed to the Hawaiian Sugar Planters Association, Alexander and Baldwin Building, July 11, 1946, which describes the exact state of the record between the employers and employees before the sugar strike of 1947.

Judge Biggs: Has Miss Lewis seen these?

(Mrs. Boulog shows the documents to Miss Lewis.)

Q. (By Mrs. Bouslog): I show you a copy of a document marked "Official copy, Agreement by and

(Testimony of Jack W. Hall.)

between Waialua Company, Ltd., and ILWU Local 145." Is this the same agreement that was negotiated during the first sugar negotiations between the union and the sugar industry?

A. Yes, this is the agreement between one of the sugar plantations and the union which was negotiated during 1945. The first agreement is generally identical with the agreements we negotiated with each of the other sugar companies.

Mrs. Bouslog: I will offer it for the record.

Judge Biggs: Any objection?

Mr. Crockett: None for that.

Judge Biggs: Very well, it will be admitted as Plaintiff's [26] Exhibit No. 2.

(Thereupon, the document referred to was marked Plaintiff's Exhibit No. 2 and received in evidence.)

Q. (By Mrs. Bouslog): I show you a document marked 1947-1948 agreement between ILWU and Hawaii Sugar Industry. Is that the contract now in force between the sugar industry and the union?

A. I might correct the record to point out that while the contract is industry-wide as to form, there are individual contracts with each of the companies. Otherwise your question states the facts, with the exception that the wage rates are 8c per hour higher than indicated here.

Judge Biggs: What document is that, please?

Mrs. Bouslog: That is 1947-1948 agreement between the union and Hawaiian Sugar Industry.

(Testimony of Jack W. Hall.)

Q. (Mrs. Bouslog): Now, I show you a——

Judge Biggs: Just a moment, please, any objection?

Mr. Crockett: We have no objection to it except and I believe prior to the time this agreement was while the indictments in question occurred in 1946, I believe prior to the time this agreement was entered into.

Judge Biggs: I think we will receive. The objection is overruled. Let it be marked Plaintiff's Exhibit No. 3.

(Thereupon, the document referred to was marked Plaintiff's Exhibit No. 3 and received in evidence.)

PLAINTIFF'S EXHIBIT No. 3

1947-48

AGREEMENT

between the
International Longshoremen's and
Warehousemen's Union
and
Hawaii's Sugar Industry

Section 7.

Conversion of Perquisites and Minimum Guarantee

Simultaneously with the installation of new wage rates as provided in Section 6, all perquisites will be eliminated and employees will be charged for

(Testimony of Jack W. Hall.)

rent and other perquisites in accordance with the attached Exhibit "E." Each individual who is paying rent will have his monthly rental divided by 208 and if the resulting amount, subtracted from his per-hour increase, leaves him less than the following guarantees, his rate will be increased by the amount of the difference.

		Minimum Net Guarantee
Single		19.0 cents per hour
Married		20.0 " " "
"	1 Dependent	21.0 " " "
"	2 Dependents	22.0 " " "
"	3 "	22.0 " " "
"	4 "	23.0 " " "
"	5 or more	23.5 " " "

Dependents shall be defined to mean the following persons living on the plantation: (1) Children under sixteen (16) years of age, (2) children under eighteen (18) years of age who are attending school, and (3) aged and infirm persons who are recognized as dependents by the plantation.

The family and dwelling status and regular wage rate of each employee will be determined as of November 19, 1946, and his regular rate will be adjusted as of such date to reflect the guarantee so established. Subsequent changes in his family or dwelling status will not affect his wage rate. New Hires will not receive the minimum guarantee but will be hired at the classified rate.

(Testimony of Jack W. Hall.)

In determining the rental amount for the purpose of applying the minimum guarantee unmarried persons renting separate quarters will be charged rentals applicable to such quarters.

In the case of family dwellings occupied by more than one plantation wage earner, the rental of such dwelling for the purpose of the above computation only will be apportioned equally among such regular wage earners.

In the case where a house is occupied both by plantation wage earners and one or more non-plantation wage earners who are paying rent to the plantation for such occupancy, the amount of the house rent to be charged the plantation wage earner for the purpose of the above computation only shall be reduced by the amount of the former rent collected from the non-plantation workers.

It is understood that the rentals for family dwellings are subject to possible adjustment up or down on the basis of the conclusions and recommendations of the appraiser or appraisers in accordance with Exhibit F. Pending such adjustment, the rental charge to any employees affected by the minimum net guarantee will be temporarily fixed at a maximum of 10 per cent below the appropriate rent figures shown on the rental schedule and the employee's premium rate fixed accordingly, subject to adjustment on the final determination of rentals by the appraiser at which time both the rent and wage rate will be adjusted in accordance with said determination.

(Testimony of Jack W. Hall.)

Section 18

Discharge

(a) Employees shall be subject to discipline or discharge by the Company for insubordination, pilferage, drunkenness, incompetence, failure to perform the work as required, violation of the terms of this agreement or failure to observe safety rules and regulations, and the Company's house rules which shall be conspicuously posted. Any discharged employee shall, upon request, be furnished the reason for his discharge in writing. Any employee who has not had six (6) months of service with the Company may be summarily discharged.

(b) The Company agrees to notify the local union representatives of proposed changes in house rules prior to the posting of such new rules and to discuss such changes with the union representatives prior to their application, it being understood, however, that in all cases the final decision shall be left to Management.

It is also understood that the Company will undertake a review of existing house rules with a view to eliminating those that are obsolete or inapplicable. Such reviews will be discussed with employee representatives with the understanding that in all cases Management's decision shall be final.

In the event of conflict between the house rules and provisions of this agreement, the agreement will prevail.

(Testimony of Jack W. Hall.)

Section 19

Grievance Procedure

When any employee covered by the terms of this agreement, or the Union believes that the Company has violated the express terms of this agreement and that by reason of such violation his or its rights arising out of such agreement have been adversely affected, he or it, as the case may be, shall be required to follow the procedure hereinafter set forth in presenting the grievance.

Step 1. The grievance may be presented by the employee concerned to his immediate supervisor or it may be presented by a representative of the Union acting in the employee's behalf to the employee's immediate supervisor who will give his answer within forty-eight (48) hours following the presentation of the grievance. At this step in the procedure, the grievance may be presented either orally or in writing and in the discretion of the employee's immediate supervisor may be answered either orally or in writing. The Company promptly upon execution of this agreement, will provide the Union with a list of the supervisors, by Company operations, who will represent Management at this step in the grievance procedure, and will thereafter promptly advise the Union regarding any changes in connection therewith.

Step 2. If the grievance is not disposed of in the first step, the complainant employee or a representative of the Union acting in his behalf may

(Testimony of Jack W. Hall.)

present the grievance to the employee's.....

(Division or Department Head) who will give his answer either orally or in writing within seventy-two (72) hours. At this step in the procedure, the grievance may be submitted either orally or in writing. The Company, promptly upon execution of this agreement, will provide the Union with a list of the individuals who will represent Management at this step in the grievance procedure, and will thereafter promptly advise the Union regarding any changes in connection therewith.

Step 3. If the grievance is not disposed of in the second step, the complainant employee may either present the grievance directly or through the Executive Committee of the Union acting in his behalf to the Industrial Relations Committee of the Company. At this step in the procedure, the grievance must be submitted in writing and the Industrial Relations Committee will answer the grievance in writing within one week following presentation of the written grievance to the Committee. The Company promptly upon execution of this agreement will inform the Union of the composition of the Industrial Relations Committee and will keep it informed of any changes therein.

Step 4. If the grievance is not disposed of in step three, it may be taken up in writing either by the employee directly or through the Executive Committee of the Union acting in his behalf at a meeting with the manager or his representative. Meet-

(Testimony of Jack W. Hall.)

ings with the manager shall be scheduled when necessary to resolve grievances appealed to that step of the procedure. After notification is received, meetings shall be held within one week. The Manager's written answer to written grievances shall be given within one week following the meeting.

Step 5. Any dispute involving the meaning, interpretation or application of the terms of this agreement which is not disposed of in Step 4 may be submitted to the Arbitrator in accordance with Section 20.

The Union promptly upon execution of this agreement will provide the Company with a written list of its representatives, who will be empowered to act in an employee's behalf in presenting or investigating grievances in accordance with the procedure set forth herein, and will thereafter promptly advise the Company of any changes that are made.

International Union representatives may be present in meetings of the third step and succeeding steps of the grievance procedure.

The Company will not be required to consider any grievance involving a single incident which has not been presented to the Company within fourteen (14) days following the date of the alleged occurrence of the incident. The Company will not be required to consider any grievance involving an alleged continuing situation or alleged series of repeated identical incidents which have not been presented to the Company within fourteen (14) days

(Testimony of Jack W. Hall.)

following the date on which the situation or incident last occurred.

Failure of the Company to answer a written grievance within the time limits prescribed in each step of the grievance procedure shall permit reference of the case to the succeeding step of the procedure following the expiration of the time limits.

The Company shall not be required to consider any grievance case in which the employee or the Union acting in his behalf does not refer the case to the succeeding step of the grievance procedure within fifteen (15) days following the delivery of written decisions by the Company in Step 3 or in succeeding steps of the grievance procedure.

In the absence of authorization to the contrary grievances are to be presented and considered outside of working hours. It is understood, however, that where reasonable and where possible without undue loss of productive time and interference with operations authority will be extended to present grievances within working hours.

Section 20

Procedure Before Arbitrator

.....
.....
.....
.....
.....

are hereby appointed as a panel of arbitrators. In

(Testimony of Jack W. Hall.)

the event a dispute arises concerning the application or interpretation of the terms of this agreement which cannot be settled pursuant to the provisions of Section 19, the dispute shall be submitted to one of the arbitrators who shall be chosen as follows:

Each party may strike two names from the panel and the remaining arbitrator shall serve in the case. All decisions of the Arbitrator shall be limited expressly to the terms and provisions of this agreement, and in no event may the terms and provisions of this agreement be altered, amended or modified by the Arbitrator. The Arbitrator shall receive for his services such remuneration as, from time to time, shall be acceptable to him and agreed upon by the parties hereto. All decisions of the Arbitrator shall be in writing and a copy thereof shall be submitted to each of the parties hereto. All fees and expenses of the Arbitrator shall be borne equally by the Union and the Company. Each party shall bear the expenses of the presentation of its own case.

The complainant in every hearing before the Arbitrator shall have the burden of proving his case by a preponderance of the evidence, and, in general, judicial rules of procedure shall be followed at such hearings but the Arbitrator need not follow the technical rules of evidence prevailing in a court of law or equity.

Admitted.

(Testimony of Jack W. Hall.)

Q. (By Mrs. Bouslog): I have a letter addressed to Hawaiian [27] Sugar Planters Association, purporting to be signed by you, dated July 11, 1946; does this letter—will you tell us what this letter contains?

Judge Biggs: Why not simply put it in, Mrs. Bouslog? I think you are getting into too great detail. Are you going to offer it?

Mrs. Bouslog: I would like to offer this for the record.

Judge Biggs: Does the witness identify it as a letter under that date signed by him?

Mrs. Bouslog: That is correct.

Judge Biggs: Any objection?

Mr. Crockett: We object to it, if the Court please, for the reason that from my examination of that it seems to be matters later incorporated into the agreement and definitely not material.

Judge Biggs: We will overrule the objection and treat your objection as a motion to strike; if it appears to the Court that is irrelevant, the Court will strike it out. Let it be marked Plaintiff's Exhibit No. 4.

(Thereupon, the document referred to was marked Plaintiff's Exhibit No. 4 and admitted in evidence.)

Q. (By Mrs. Bouslog): Now, in relation to the pineapple dispute that existed in 1947, will you state briefly what situation was reached between the employers and the union prior to the strike? [28]

(Testimony of Jack W. Hall.)

A. The employers had made a counter-proposal offer of 10c per hour on classifications and a minimum increase of 5c per hour to our demand for a 25c an hour increase.

Q. Was a strike vote conducted in the pineapple industry on the basis of the last employer offer?

A. Well, the employers may have made some slight modifications in their position after the strike vote was taken, but the strike vote was taken on what was substantially the employer's last offer.

Q. And was there a vote to authorize the negotiating committee to call a strike?

A. That is correct.

Q. At what time did the strike occur?

A. I'm sorry. I don't recall the exact date. It was, I think, July, the early part of July.

Q. (By Judge Biggs): Of what year, please?

A. 1947.

Mrs. Bouslog: I can——

Judge Biggs: Do you know the date?

Mrs. Bouslog: Yes.

Judge Biggs: Lead the witness then.

Q. (By Mrs. Bouslog): Between July 10th, let's see, the negotiations were terminated sometime in the month of July, is that right?

A. That is correct. [29]

Mrs. Bouslog: Our petition alleges, your Honor

Judge Biggs: Is that date agreed to as the date?

Miss Lewis: Between the 10th and the 15th, yes.

(Testimony of Jack W. Hall.)

Mrs. Bouslog: And it has been stipulated already.

Judge Biggs: It is agreed to; all right.

Q. (By Mrs. Bouslog): How long did that strike last? A. Five days.

Q. And it was the unlawful assembly and conspiracy statute that affected the decision to return to work in that strike?

A. I so testified earlier.

Mrs. Bouslog: I have no further questions.

Judge Biggs: Cross-examine, Mr. Crockett.

Mr. Crockett: May we take a little recess at this time, your Honor?

Judge Biggs: Yes, we will take a five-minute recess.

(Recess.) [30]

Cross-Examination

By Mr. Crockett:

Q. Mr. Hall, you stated that the wages of the sugar workers before the union came in was about 27 to 28 cents an hour, plus a bonus of 25%, plus perquisites. Now tell us what those perquisites included. Could you do that?

A. Yes, I could. They included, as I testified earlier, housing accommodations, fuel, water and medical attention.

Q. And the medical attention, did that also include hospitalization? A. Of course.

Q. And did that hospitalization, as far as you

(Testimony of Jack W. Hall.)

know, include just for the worker or did that include his family, regardless of size?

A. It includes his family regardless of size.

Q. And in regard to taxes, the income taxes and other taxes which were payable by the worker, and his income particularly, do you know whether the tax base included the value of the perquisites, or isn't it a fact that they were not computed on the perquisites that were received by the worker?

A. The worker did pay taxes, so far as the Social Security was concerned, on the perquisites.

Q. How about the other taxes?

A. I am not sure I know the answer to that.

Q. As to the income tax do you know the answer? [31]

A. I am not sure I know the answer.

Q. All right. You gave us in detail the wage table of the sugar workers prior to the coming of the union into the picture. How about the pineapple workers; what were their wages?

A. I don't recall that I testified to that on direct examination.

Q. No, you did not, as to the pineapple workers.

A. I am willing to answer the question.

Q. (By Judge Biggs): Yes, answer the question.

A. Well, prior to the coming of the union into the pineapple industry the wages varied on all the islands. On this island the workers in the canneries were receiving 70 cents per hour for male employees and 60 cents for female. The field em-

(Testimony of Jack W. Hall.)

ployees were receiving 15 cents per hour less, but they received the customary perquisites. The same was true of the canneries on Maui, except the Libby cannery, which had a base of 67½ cents an hour for male, and, as I recall, it was 10 cents less for females. On Kauai the rates were substantially less. The Hawaiian Fruit Packers Company, as I recall, paid 50 cents an hour for the male labor, and you must remember, though, that when the union came into the pineapple industry it was actually about a year later than in sugar, and the impact of the organization of sugar had some effect on the wage structure in pineapple. [32]

Q. That is your conclusion?

A. Of course.

Q. Now, as I understand you, the wages for the field workers in the pineapple industry also included perquisites?

A. That is correct.

Q. Were those perquisites the same or substantially the same as the perquisites furnished the sugar workers?

A. Oh, substantially the same, I would say.

Q. When did the sugar strike start in the Territory?

A. September 1 of 1946.

Q. And how long did it continue?

A. Until the 19th of November on all companies but the Pioneer Mill Company where it went to the 2nd of January, 1947.

Q. On Pioneer Mill it was not over until the 2nd of January?

A. That's correct.

(Testimony of Jack W. Hall.)

Q. Do you recall the date when the incident occurred at Paia in which you say large numbers were arrested in mass?

A. As I recall, it was sometime in October. I don't recall the exact date.

Q. The exact date was October 16th, to refresh your memory, when the incident occurred?

A. I could not say positively. I think that is correct.

Q. And do you know or recall whether any picketing continued on Maui from October the 16th until November the 17th?

A. Continuing from the 16th to the 17th?

Q. Or approximately to the end of the strike?

A. Yes, there was some picketing.

Q. When you say "some," to what extent did it continue?

A. Well, I don't think it continued in the same volume that it had prior to that date. I think the people who were over there all the time, throughout the strike, can probably answer that better than I.

Q. When you say the "same volume," what do you mean? What was the volume before the time of the incident?

A. I think you will have to talk to the people on Maui to get the actual numbers. I stayed in Honolulu throughout the strike, except for frequent visits, very hurried ones.

Q. You are a member of the strategy committee of the strike?

(Testimony of Jack W. Hall.)

A. We had not determined in Honolulu how many pickets are to be placed where.

Q. The strategy committee received continuous reports as to what was going on on Maui?

A. That is correct.

Q. Isn't it a fact that on or about the 16th the strikers were turning out in picket lines, containing from three to four to five hundred men?

A. I would not know the figures.

Q. Would you say it would be about that much?

A. I would not know the figures. Those figures were not reported.

Q. They claim they were reported. [34]

A. There may have been occasions where maybe they said "We got 50 pickets out sometime today," but generally that was not reported.

Q. And you can't state how many men were on the line on the day this occurred? A. No.

Q. Do you know from any source?

A. I have seen some pictures.

Q. Isn't it a fact that clearly shows two or three hundred men?

A. There must have been more than 100 men.

Q. You would say the volume amounts to two or three hundred men?

A. I say there was more than one hundred.

Q. You say the union did not continue with that great a number. About what was the volume after the 16th?

A. I understand that it was somewhat less than

(Testimony of Jack W. Hall.)

it had been prior to the arrest for unlawful assembly.

Q. Well, when you say "less," about how many less; could you tell us?

A. I could not estimate that.

Q. You received no reports as to how many were on the line at all?

A. No. As I say, maybe we would get a report that on one particular day so many people were on one plantation, but we [35] kept no record as to how many were out at a time on each of the plantations.

Q. You have no recollection of any report at this time that was received?

A. No, I cannot say that I have any recollection at this time. We have detailed minutes which may show some information that might refresh my mind.

Q. Now did picketing continue on any other places on the island of Maui until the termination of the strike?

A. I think I testified that it did.

Q. Please answer that question.

A. Of course, picketing continued until the 14th of November.

Q. And at what places?

A. I imagine at all plantations.

Q. And what plantations are on Maui other than M. A. Company?

A. Wailuku Sugar Company, the Hawaiian Commercial & Sugar, and Pioneer Mill Company.

(Testimony of Jack W. Hall.)

Q. So that picketing did continue at H. C. & S. Company until about the end of the strike?

A. That is as I recall it.

Q. And picketing continued at the Wailuku Sugar Company until the end of the strike?

A. Correct.

Q. And also continued at Lahaina until the end of the strike there, or approximately at the end of the strike? [36]

A. That's correct.

Q. Isn't it a fact, too, Mr. Hall, that an injunction was issued before the Circuit Court requiring the picketing on the island of Maui—I think it refers to the M. A. Company plantation at Paia?

A. I believe that is so.

Q. Did that injunction have any effect upon the picketing?

A. Not near the effect that the 20-year sentence would have. There is quite a difference——

Q. Please answer the question. Did it have any effect on the picketing?

A. I assume that any action against the strike would have some effect on them.

Q. Do you recall what the terms of the injunction were, with reference to picketing, at the M. A. Company at Paia?

A. No, I do not recall the details.

Q. Well, isn't it a fact that it limited to three men not within more than ten feet of each other, or something to that effect?

(Testimony of Jack W. Hall.)

A. If I recall there, there was a limitation of the total number of pickets and to so many pickets at each point ingress or egress. I think three was the number.

Q. And that injunction continued for sometime, did it not?

A. It certainly did.

Q. And now you mentioned the fact that a vote was taken in [37] the pineapple industry with reference to a strike in that industry; that was in 1947, was it not?

A. That is correct.

Q. And what month was that?

A. The strike was in July. The strike vote was taken about three months before that, when the employers had refused to make any further concessions on their position, and said "This is final," and substantially the position they had taken——

Q. Yes.

A. At the time they took the strike vote, and maintained the position until the strike ended.

Q. So the time of the vote was approximately three months prior to July?

A. As I recall it, yes.

Q. What was the portion of the vote in favor of the strike at that time?

A. As I recall it, it was well over 90%. I would have to look at the figures. I think they are available. I think they were published in the daily papers.

(Testimony of Jack W. Hall.)

Q. And as a result of that vote the people did go on a strike? A. That is correct.

Q. And now with respect to the picketing, was there any picketing during that strike?

A. Yes.

Q. Where did the picketing occur with reference to the county [38] of Maui; with reference to Maui, and what organization on Maui?

A. At Libby, McNeill & Libby, both at their cannery and at their field operations, and at the Maui Pineapple Company, at the cannery operations, and at the Baldwin Packers Company, at both their field and cannery operations.

Q. Now that is in reference to the island of Maui. How about the island of Molokai, which is a part of the County of Maui?

A. They picketed at the California Packing Corporation, and at Libby, McNeill & Libby's operations.

Q. And then on the island of Lanai they picketed over there too?

A. Yes, there was picketing.

Q. And with reference to the island of Lanai how long did the picketing continue?

A. I am not sure whether they picketed the last few days of the strike.

Q. Would your records show any memorandums received as to that, as a member of the strategy committee?

(Testimony of Jack W. Hall.)

A. Yes, I think we would know whether any picketing was going on there at the time of the strike. As I recall, even on this island, there was no picketing on the last day of the strike.

Q. But during the early days of the strike there was [39] picketing on this island? A. Yes.

Q. And practically the same thing is true throughout the Territory wherever the pineapple strike was in effect, there was picketing, isn't that a fact? A. Yes.

Q. And then there have been other labor disturbances since then, have there not; I think particularly here in Honolulu, and the other islands?

A. Well, now, let's see. I presume there have been labor disturbances, but I don't recall offhand that any of our people have been involved in a strike since the pineapple lockout—or, rather, the pineapple strike.

Q. You don't recall of any strikes which have occurred in Honolulu, but isn't it a fact there was a strike in effect against one of the fish packing companies, isn't that so?

A. That was, if I recall, prior to the pineapple strike.

Judge Biggs: Is that within the scope of the cross-examination, Mr. Crockett; properly within it?

Mr. Crockett: I am simply attempting to show, if the Court please, that this witness has testified that by reason of what arose out of this, there was

(Testimony of Jack W. Hall.)

directly an intimidation against their going on strike, because the right of picketing was curtailed.

Judge Biggs: All right. [40]

A. As a matter of fact, now that you have raised the point, my memory is refreshed. Since the end of the pineapple strike there have been no members of our union out on strike.

Q. Well, the strikes that I have mentioned, or the disturbances I have mentioned, was that between the companies and your union or the A. F. of L.?

A. The Tuna Packers, that was a strike of 1947, before the pineapple strike.

Q. What unions were involved in that?

A. Our union. In the spring of 1947. That was also, incidentally, a strike that lost because of the illegal action against us.

Q. There was picketing during that disturbance, was there not? A. Correct.

Q. And how long did that picketing continue?

A. Well, I think the fishermen were out on strike somewhat over two months, and I think the other employees for about ten or 12 days, and some of the other employees.

Q. Now, turning again to the sugar strike, and to Maui; were there any other arrests made on the island of Maui for any incident occurring during the strike? That is, with reference to picketing and things like that?

Mrs. Bouslog: I will object to that, on the

(Testimony of Jack W. Hall.)

ground it is not within the scope of the cross-examination. [41]

Judge Biggs: We will allow this question, and overrule your objection, with the admonition to Mr. Crockett not to pursue this line too far.

A. What do you refer to?

(Last question read by reporter.)

A. I don't know what "picketing and things like that" means. If you say "Were there other arrests during the strike," I will say "Yes, there were." I don't recall, though, what,—As I recall there were arrests for assault and battery. That is a matter of record in the court.

Q. That concerns the persons who were on strike?
A. Yes.

Q. Where were those arrests made?

A. At Pioneer Mill Company.

Q. Were there any other arrests made with regard to any of the strike activities at Paia?

A. I don't recall. I think there might have been one or two cases of a minor nature.

Q. Arrests at Paia?

A. I think there may have been. I could not testify to that.

Q. Were there any arrests—Then the only other incidents you recall were at Lahaina?

A. On the island of Maui, yes; that's true.

Judge Biggs: Are you concluding?

Mr. Crockett: I think that is all. That is all, if the [42] Court please.

(Testimony of Jack W. Hall.)

Judge Biggs: Anything in redirect?

Mrs. Bouslog: Just one question, your Honor.

Redirect Examination

By Mrs. Bouslog:

Q. Has there ever been a determination by the Federal government or by any other authority on the value of perquisites?

A. Well, there has been a so-called reasonable value fixed under the Social Security Act, and then I had some experience in that myself——

Judge Biggs: I think the proper way to prove that, if it be pertinent, is by proof of whatever documents it was fixed in.

Witness: I can answer in one word. If you are referring to a value as far as wages *if* concerned, and that's all, there has never been a determination as to the reasonable cost of the perquisites under the Fair Labor Standards Act.

Q. Do you know what date——

It is a fact that they are reported as expenses by the company; that is, the actual cost of perquisites?

A. I cannot say, for the industry as a whole. They have used arbitrary financing.

Mrs. Bouslog: That is all.

Mr. Crockett: That is all we have.

(Witness excused.) [43]

Mrs. Bouslog: Your Honors, you will notice in our stipulation that the defendant did not want to

stipulate to the individual and representative capacities in which these various suits were brought by the union officers.

Judge Biggs: You are now going to endeavor to prove that, is that correct?

Mrs. Bouslog: Yes, that is correct.

Judge Biggs: All right. Swear the witness, please.

ANTONIO T. RANIA

called as a witness by the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. What is your name, please?

A. Antonio T. Rania.

Q. (By Judge Biggs): How do you spell the last name?

A. (Spelling) "R-a-n-i-a."

Q. Are you a member of the International Longshoremen's & Warehousemen's Union?

A. Yes.

Q. How long have you been a member?

A. Since 1944, when I was about to volunteer into the army.

Q. How long have you lived in the islands, Mr. Rania?

A. Off and on since 1916.

Q. Are you the Antonio T. Rania who is shown in this [44] complaint that was filed in this court,

(Testimony of Antonio T. Rania.)

asking this court to declare the unlawful assembly and riot statute unconstitutional? A. Yes.

Judge Biggs: What number was that?

Mrs. Bouslog: 836, your Honor.

Q. What office do you hold with the International Longshoremen's & Warehousemen's Union?

A. At the present time I am the president of the United Sugar Workers' Local 142.

Q. And what does Local 142 comprise, Mr. Rania?

A. It comprises all the different islands where the sugar industry is produced, namely Hawaii, Maui, Oahu and Kauai.

Q. And did you bring this suit for yourself as a member and on behalf of—or as an officer for the members, and in your representative capacity?

A. As an elected officer of a local, I bring this in behalf of the membership, and on behalf of myself as an American citizen.

Q. And why did you bring the action in this case?

A. I think it is directed against labor, in which we belong, because it puts fear into our workers, which is contrary to one of the Four Freedoms, and it also takes away our membership, supposing we were on strike and all of a sudden——(interrupted)

Q. (By Judge Biggs): Takes away what?

A. Our membership, and they are arrested, and mass arrests. Now I understand you have more than 70 arrested in the last strike—that is terrific—

(Testimony of Antonio T. Rania.)

Mr. Crockett: If the Court please, I ask that the statement of the witness be stricken as a mere conclusion, and argumentative.

Judge Biggs: Does that conclude your examination?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: The motion to strike is denied, with the right to renew it if it appears to be not relevant later. Cross-examine.

Mr. Crockett: No cross-examination.

(Witness excused.)

Mrs. Bouslog: At this time I would properly present Jack Kawano, who is a union officer in Case 828, but Mr. Kawano is on another island today, and was not able to get back, but I will have him here when he returns. His testimony will be very brief, and I will take him out of order at a later time.

Judge Biggs: Very well.

Mrs. Bouslog: At the present time I would like permission of the Court to take another witness somewhat out of order, because he has an engagement elsewhere. He is a student and needs to return to his classes. [46]

Judge Biggs: Very well.

SHIGETO MINAMI

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please.

A. My name is Shigeto Minami.

Q. Where do you live now?

A. At Judo Mission Dormitory, 1429 Makiki street

Q. Is that a dormitory of the University of Hawaii? A. No.

Q. You are attending the University of Hawaii?

A. Yes.

Mrs Bouslog: Your Honor, this deals with the complaint in Civil No. 828.

Judge Biggs: Yes.

Q. Where were you living on—or in July, 1947?

A. I was living at my home in Lanai City.

Q. Prior to July 10th 1947 were you employed?

A. Yes.

Q. For whom were you working?

A. I was working for the Research Department of the Hawaiian Pineapple Company.

Q. And were you a member of the union? [47]

A. No.

Q. When the union members went on strike on July 10th 1947 did you go on strike too?

A. Yes, I did not go to work.

Q. You did not go to work? A. No.

Q. On the date of July 14, 1947—(Your

(Testimony of Shigeto Minami.)

Honor, that is the date of the harbor incident as it appears from the complaint, and it has been stipulated on the date of July 14, 1947)——were you at any time down at the harbor on Lanai City?

A. Yes.

Q. I mean, down at the harbor away from Lanai City? A. Yes.

Judge Biggs: The Court is not familiar with the geography. You mean the harbor appurtenant to Lanai City?

Mrs. Bouslog: No, your Honor, for the Court's benefit—I will let the witness do it——

Q. Where is Lanai City in relation to the harbor?

A. Well, the harbor is on the seacoast——that is obvious——and the City is about seven miles inland from the harbor.

Q. Seven miles inland? A. Yes.

Q. The City is located on the plateau where the Pineapple is grown, is that correct? A. Yes.

Q. And to get to the harbor you have to take the road and drive seven miles, in order to get down to the harbor? [48] A. Yes

Q. What is the proper name of the harbor?

A. Well, we call it——it is called Kaumalapau.

Q. (By Judge Biggs): Will you spell it for the reporter.

A. I believe it is spelled “K-a-u-m-a-u-p-a-l-u-p-a-u.”

Judge Biggs: Let's call it the “harbor.”

(Testimony of Shigeto Minami.)

Q. Well, on the morning of——on the day of July 14th, were you down at the harbor at any time? A. Yes, I was.

Q. What time did you go down there?

A. I went down about 10 o'clock, I believe.

Q. And for what purpose did you go down there?

A. Oh, we went down there intending to swim.

Q. How long did you remain down at the harbor?

A. We stayed down there until about one o'clock.

Q. And were there any police officers down there while you were down there?

A. Yes, I recall some officers in uniform.

Q. That was before 1:30?

A. Yes. While I was down there.

Q. Did you see any police officers taking pictures down there at that time?

A. Well, I believe there were some men taking pictures.

Q. And after you left the harbor at 1:30 did you go back down to the harbor at any time again that day? [49] A. No, I did not.

Q. And you left at 1:30, is that correct?

A. About one.

Q. Were you down at the harbor at the time the alleged incident occurred? A. No.

Q. Were you arrested in connection with that incident? A. Yes, I was.

Q. When were you arrested?

(Testimony of Shigeto Minami.)

A. I don't know the exact date, but about two weeks after, at the same time when the rest of the members of the union were arrested.

Mrs. Bouslog: The record shows, your Honor, in the transcript filed by the Attorney General, of the Magistrate's Court, that the arrest was made on August the 1st, 1947. The record also, if I am to make this witness' testimony as short as possible—the record also shows that this defendant was charged with unlawful assembly and riot and that he put up bail, and that is in the record, and it was stipulated to by Mrs. Lewis. And that he was not released until August the 6th—or, from August the 6th until, I believe, it was sometime in September—No, on August the 28th he was discharged, or the prosecution moved to strike his name, but he was under indictment and charged with unlawful assembly and riot between those times, and that all appears in the record, too. We have [50] stipulated to that

Mr. Crockett: May I amend that by saying there was no indictment; just a complaint.

Mrs. Bouslog: I am sorry.

Mr. Crockett: A police complaint.

Judge Biggs: A police complaint.

Mrs. Bouslog: But he was under bail there that day, and charged with unlawful assembly.

Judge Biggs: Yes, and all this appears in the record, as being stipulated?

Mrs. Bouslog: Yes, with the exception of the

(Testimony of Shigeto Minami.)

reason for——why he was not down there at the time. Judge Biggs: Yes.

Q. Do you know how long the preliminary hearing which you attended took; how many times did you have to appear in the court?

A. Oh, I would say about on——about five different occasions.

Q. And on one occasion how many days did the hearing go on?

A Well, I believe at one time we held the hearing there for about three days straight.

Q. And during the course of that hearing which you attended was there any evidence whatsoever that you had been down at the harbor at the time of the incident? A. No. [51]

Cross-Examination

By Mr. Crockett:

Q. What bail did you have to put up?

A. \$100.

Q. And you say you appeared in court on five different occasions, on one of which you were there for three continuous days?

A. I am not definite, but I believe it was about five times I appeared in court.

Q. Isn't it a fact that the five times you appeared in court include the three days consecutively that you appeared there? A. Yes.

Mr. Crockett: That is all. No further cross-examination

(Witness excused.)

MAC MASATO YAMAUCHI

called as a witness on behalf of plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your full name to the Clerk, please. A. Mac Masato Yamauchi.

Q. Where do you live? A. Lahaina. [52]

Q. What island? A. Lahaina, Maui.

Q. By whom are you employed?

A. Pioneer Mill Company.

Q. Are you a member of the union?

A. Yes.

Q. When did you join the union?

A. In the latter part of 1943.

Q. Were you a member of the union at the time of the Territory-wide sugar strike, September 1st?

A. Yes.

Q. Did Pioneer Mill go on strike at that time?

A. Yes.

Q. What office did you hold with the union during the time of that strike?

A. I was the chairman of the strike strategy committee.

Q. And were you arrested during the course of the strike? A. Yes.

Q. Do you recall the date of your arrest?

A. I believe it was November 13th

Q. I show you a copy of a complaint which says:
“District Court of Wailuku, County of Maui, com-

(Testimony of Mac Masato Yamauchi.)

plaint against you, Mas Masato Yamauchi, and a number of other persons, who are charged with felonious and unlawful assembly. Will you look at that complaint and see if that is the complaint on which [53] you were charged.

Judge Biggs: Is it stipulated?

Mrs. Bouslag: Mr. Crockett said he would not object as to the form.

Mr. Crockett: No; we are willing to stipulate that that is a copy of the complaint. As I informed counsel, we will object to it because it is not material to the issues in this particular case.

Judge Biggs: The Court will overrule your objection, subject to a motion to strike as to the materiality, and I would suggest that they be identified simply by reciting what they are to the Court, and then that they be marked as one exhibit.

Mrs. Bouslog: I will ask the Court's permission to substitute copies at a later date, because these have a number of pencil notations on them, and I was not able to get another copy.

Judge Biggs: Very well.

Mrs. Bouslog: For the information of the Court, one complaint charges Mac Masato Yamauchi and ten other persons, together with other persons unknown, in the words of the statute, your Honor——

Judge Biggs: Very well. What case is the witness, Mr. Yamauchi in?

Mrs. Bouslog: Mr. Yamauchi is not a complaint

(Testimony of Mac Masato Yamauchi.)
in [54] this action. The purpose of his testimony, your Honor, is to show that the cases before the Court are not the only instances in which this statute has been invoked against members of the union.

Judge Biggs: Very well.

Mrs. Bouslog: Then the second complaint includes Mac Masato Yamauchi——

Judge Biggs: This witness?

Mrs. Bouslog: This witness, and 11 others—there are 21 in these—21 individuals, altogether, who were charged with unlawful assembly during the Lahaina strike—at the Pioneer Mill during the sugar strike.

Judge Biggs: Very well. Let that be marked, first. Mark them as one exhibit. Number 5.

(Documents offered are received and marked:
“Plaintiffs’ Exhibit No. 5.”)

PLAINTIFF’S EXHIBIT No. 5

District Court of Wailuku, County of Maui,
Territory of Hawaii

COMPLAINT

F. B. Demello first being duly sworn says:

That Mac Masato Yamauchi, Masaru Mizomi, Silverio Bucaneg, Roque Omisol, Kosei Toyama, Masanobu Kawahara, Jose Sullivan, Takeo Taira, Masao Kaita, and William Seabury at Lahaina, in the District of Lahaina, County of Maui, Territory

(Testimony of Mac Masato Yamauchi.)
of Hawaii, on to-wit the 6th day of November, 1946, together with divers others persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror or tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence, to-wit, assaulting, shoving, pushing and using menacing language and gestures and other hostile signs and demonstrations, tending and intending to strike terror into one, Harlow Wright, contrary to the form of the statutes in such cases made and provided.

/s/ FRANCIS B. DEMELLO

Subscribed and sworn to before me this 13th day of November, A. D. 1946.

/s/ ANDREW H. WONG,

District Magistrate of Wailuku, County of Maui.

Admitted.

District Court of Wailuku, County of Maui,
Territory of Hawaii

COMPLAINT

F. B. Demello first being duly sworn says:

That Mac Masato Yamauchi, Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi

(Testimony of Mac Masato Yamauchi.)

Mishima, Hisashi Taguchi, Seichi Fujiwara, Sixto Aquino, Cirilo Sacoco, Fernando Calma and Carlos Milian at Lahaina, in the District of Lahaina, County of Maui, Territory of Hawaii, on to-wit the 6th day of November, 1946, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror or tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence, to-wit, assaulting, shoving, pushing and using menacing language and gestures and other hostile signs and demonstrations, tending and intending to strike terror into others, to-wit, James Backlund and Michael Hopland Nelson, contrary to the form of the statutes in such cases made and provided.

/s/ FRANCIS B. DEMELLO.

Subscribed and sworn to before me this 13th day of November, A. D. 1946.

/s/ ANDREW H. WONG,

District Magistrate of Wailuku, County of Maui.

Admitted.

Q. After you were arrested, on this complaint, were you required to put up bail? A. Yes.

(Testimony of Mac Masato Yamauchi.)

Q How much bail did you put up?

A. About \$550. \$200 for unlawful assembly, and on two counts.

Q. We are talking now about the bail you put up at the very first instance. Do you recall how much money was posted by the union for your appearance in court? [55]

A. A thousand dollars.

Q. On each count? A. On each count.

Q. Now what time did the Territorial-wide sugar strike end? A. On November 19th.

Q. What time did the strike end at Pioneer Mill?

A. We went back to work on November 19th, but the strike ended January the 2d.

Q. Why did the employees of Lahaina go back on strike again after the rest of the employees were at work?

A. Because the management have discharged 10 of our members.

Q. Were those ten persons discharged among those charged by the complaints which have been introduced here? A. Yes.

Q. And they were discharged before there was a trial of the issues involved in the complaint?

A. Yes.

Q. What was the reason given for their discharge?

A. Violating the house rules.

Q. The house rules of the Pioneer Mill Company? A. Yes.

(Testimony of Mac Masato Yamauchi.)

Q. Do those house rules provide that a person may be discharged for any offenses committed in the company town? A. Yes.

Judge Biggs: Well this Court, at least speaking for [56] myself, is totally unfamiliar as to what house rules are. Do you have copies of the house rules?

Mrs Bouslog: There will be later witnesses in the Paia and Lanai incidents. I do have copies of the house rules. I don't have them from this witness.

Q. Now after criminal complaint was lodged against you by the police, about your part in an assault and battery involving James B. Dagland, Michael H. Nelson and one Harlow Wright——

A. Yes.

Q. Did you tell the police that you had anything to do with those—— A. No.

Q. Were you——

Judge Biggs: I don't think the answer is clear. Does the witness mean that he told the police that he had nothing to do with these matters?

Q. Did you tell the police you had nothing to do with these matters?

A. Well, I was not present at the occasion

Judge Biggs: Either your question is pertinent or it isn't. I have a little doubt as to its relevancy, anyhow.

Mrs. Bouslog: I am trying to establish, your Honor, that the police knew that Mr. Yamauchi

(Testimony of Mac Masato Yamauchi.)

was not present at either one of those occasions,
But I will prove it in another manner. [57]

Q. Were you subsequently indicated by the
grand jury of Maui County for unlawful assembly
and riot? A. Yes.

Q. And a former assault and battery?

A. Yes.

Q. Is this a copy of the indictment against you?

A. Yes.

Q. There were two indictments brought in
against you, is that correct? A. Yes

Q. And here is the other one? (Indicating)

A. Yes.

Q. And these indictments include also the 21
people who were arrested at the same time you
were? A. Yes.

Q. Now, subsequently to——

Judge Biggs: If you are going to offer these
papers, offer them now.

Mrs. Bouslog: Yes, I will offer the indictment
of the 2nd Circuit Court, relative to this witness
and the other witnesses.

Judge Biggs: It is admitted subject to the prior
objection, and the same ruling, and note them please
as Exhibit 6—Plaintiffs' Exhibit 6.

(Documents offered received and marked:
"Plaintiffs' Exhibit 6.") [58]

(Testimony of Mac Masato Yamauchi.)

PLAINTIFF'S EXHIBIT No. 6

In the Circuit Court of the Second Judicial Circuit,
Territory of Hawaii
January A. D. 1946 Term

TERRITORY OF HAWAII

vs.

MAC MASATO YAMAUCHI, ICHIRO HI-
RATA, ISAMI OGAWA, K. OBA, TAMIO
SHIOTSUGU, HIROMI MISHIMA, HISA-
SHI TAGUCHI, SEICHI FUJIWARA,
SIXTO AQUINO, CIRILO SACOCO, FER-
NANDO CALMA and CARLOS MILIAN,
Defendants.

INDICTMENT

First Count, Riot

The Grand Jury of the Second Circuit of the Territory of Hawaii do present that Iichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hisashi Taguchi, Seichi Fujiwara, Sixto Aquina, Cirilo Sacoco, Fernando Calma and Carlos Milian, at Olowalu, in the District of Lahaina, County of Maui, Territory of Hawaii, on to-wit the 6th day of November 1946, together with diverse other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror or tending and intending to strike

(Testimony of Mac Masato Yamauchi.)

terror in others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence, to-wit, assaulting, beating, shoving, pushing and using menacing language and gestures and other hostile signs and demonstrations, tending and intending to strike terror into others, to-wit, James B. Backlund and Michael Hopland Nelson; and

The Grand Jury do further present that Mac Masato Yamauchi not being present at the commission of such offense did unlawfully and feloniously procure, counsel, and incite the said Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hishashi Taguchi, Seichi Fujiwara, Sixto Aquino, Cirilo Sacoco, Fernando Calma and Carlos Milian to commit the offense hereinabove set forth and thereby was an accessory before the fact of the commission of such offense.

Contrary to the form of the statute in such cases made and provided.

Second Count, Conspiracy, Third Degree

And the Grand Jury do further present that, Mac Masato Yamauchi, Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hisashi Taguch, Sheich Fujiwara, Sixto Aquino, Cirilo Saco, Fernando Calma and Carlos Milian, at Lahaina and Olowalu, in the District of Lahaina, County of Maui, Territory of Hawaii, on to-wit, the 6th day of November 1946, together with divers

(Testimony of Mac Masato Yamauchi.)

other persons whose names are unknown, did unlawfully, maliciously and fraudulently combine and mutually undertake and concert together to commit an offense, to-wit, to unlawfully, maliciously and forcibly inflict corporal injuries to and upon others, to-wit, James B. Backlund and Michael Hopland Nelson,

Contrary to the form of the statute in such cases made and provided.

Third Count, Assault and Battery

And the Grand Jury do further present that, Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hisashi Taguchi, Sheichi Fujiwara, Sixto Aquino, Cirilo Sacoco, Fernando Calma and Carlos Milian at Olowalu, District of Lahaina, County of Maui, Territory of Hawaii, on to-wit the 6th day of November 1946 did unlawfully, maliciously and forcibly inflict a corporal injury to and upon another to-wit, one James B. Backlund, without authority or justification by law;

And do further present that Mac Masato Yamauchi, not being present at the commission of such offense did unlawfully and feloniously procure, counsel, and incite the said, Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hisashi Taguchi, Sheichi Fujiwara, Sixto Aquino, Cirilo Sacoco, Fernando Calma and Carlos Milian to commit the offense hereinabove set forth and thereby was an accessory before the fact to the commission of such offense.

(Testimony of Mac Masato Yamauchi.)

Contrary to the form of the statute in such cases made and provided.

Fourth Count, Assault and Battery

And the Grand Jury do further present that, Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hisashi Taguch, Sheichi Fujiwara, Sixto Aquino, Cirilo Sacoco, Fernando Calma and Carlos Milian at Olowalu, District of Lahaina, County of Maui, Territory of Hawaii, on to-wit the 6th day of November 1946, did unlawfully, maliciously and forcibly inflict a corporal injury to and upon another, to-wit, one Michael Hopland Nelson, without authority or justification by law:

And do further present that Mac Masato Yamauchi, not being present at the commission of such offense did unlawfully and feloniously procure, counsel, and incite the said Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hisashi Taguchi, Sheichi Fujiwara, Sixto Aquino, Cirilo Sacoco, Fernando Calma and Carlos Milian to commit the offense herein above set forth and thereby was an accessory before the fact to the commission of such offense,

Contrary to the form of the statute in such cases made and provided.

(Testimony of Mac Masato Yamauchi.)

A true Bill found this 12th day of December 1946.

D. DEASE,

Foreman of the Grand Jury.

WENDELL F. CROCKETT,

Prosecuting Officer,

County of Maui.

Admitted.

In the Circuit Court of the Second Judicial Circuit,
Territory of Hawaii

January A. D. 1946 Term

TERRITORY OF HAWAII

vs.

MAC MASATO YABAUCHI, MASARU MIZ-
OMI, SILVEIRO BUCANEG, ROQUE OMI-
SOL, KOSEI TOYAMA, MASANOBU KA-
WAHARA, JOSE SULLIBAN, TAKEO
TAIRA, MASAO KAITA, WILLIAM SEA-
BURY,

Defendants.

INDICTMENT

First Count, Riot

The Grand Jury of the Second Circuit of the Ter-
ritory of Hawaii do present that Masaru Mizomi,
Silveiro Bucaneg, Roque Omisol, Kosei Toyama,
Masanobu Kawahara, Jose Sulliban, Takeo Taira,
Masao Kaita and William Seabury, at Olowalu, in
the District of Lahaina, County of Maui, Territory

(Testimony of Mac Masato Yamauchi.)

of Hawaii, on to-wit the 6th day of November 1946, together with diverse other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror or tending and intending to strike terror in others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence, to-wit, assaulting, beating shoving pushing and using menacing language and gestures and other hostile signs and demonstrations, tending and intending to strike terror into others, to-wit, Harlow Wright, and

The Grand Jury do further present that Mac Masato Yamauchi not being present at the commission of such offense did unlawfully and feloniously procure, counsel, and incite the said Masaru Mizomi, Silveiro Bucaneg, Roque Omisol, Kosei Toyama, Masanobu Kawahara, Jose Sullivan, Takeo Taira, Masao Kaita and William Seabury to commit the offense hereinabove set forth and thereby was an accessory before the fact of the commission of such offense.

Contrary to the form of the statute in such cases made and provided.

Second Count, Conspiracy, Third Degree

And the Grand Jury do further present that, Mac Masato Yamauchi, Masaru Mizomi, Silveiro Bucaneg, Roque Omisol, Kosei Toyama, Masanobu Kawahara, Jose Sullivan, Takeo Taira, Masao

(Testimony of Mac Masato Yamauchi.)

Kaita and William Seabury at Lahaina and Olowalu, in the District of Lahaina, County of Maui, Territory of Hawaii, on to-wit, the 6th day of November 1946, together with divers other persons whose names are unknown, did unlawfully, maliciously and fraudulently combine and mutually undertake and concert together to commit an offense, to-wit, to unlawfully, maliciously and forcibly inflict corporal injuries to and upon others, to-wit, Harlow Wright,

Contrary to the form of the statute in such cases made and provided.

Third Count, Assault and Battery

And the Grand Jury do further present that, Masaru Mizomi, Silveiro Bucaneg, Roque Omisol, Kosei Toyama, Masanobu Kawahara, Jose Sulliban, Takeo Taira, Masao Kaita and William Seabury at Olowalu, District of Lahaina, County of Maui, Territory of Hawaii, on to-wit the 6th day of November 1946 did unlawully, maliciously and forcibly inflict a corporal injury to and upon another to-wit, one Harlow Wright, without authority or justification by law.

And do further present that Mac Masato Yamauchi, not being present at the commission of such offense did unlawfully and feloniously procure, counsel, and incite the said Masaru Mizomi, Silveiro Bucaneg, Roque Omisol, Kosei Toyama, Masanobu Kawahara, Jose Sulliban, Takeo Taira, Masao Kaita and William Seabury to commit the offense herein-

(Testimony of Mac Masato Yamauchi.)

above set forth and thereby was an accessory before the fact to the commission of such offense.

Contrary to the form of the statute in such cases made and provided.

A True Bill found this 12th day of December 1946.

/s/ D. DEASE,

Foreman of the Grand Jury.

WENDELL F. CROCKETT,

Prosecuting Officer,

County of Maui.

[Admitted]: Filed Dec. 12, 1946.

Q. Did you ever have a jury-trial or go to trial on this indictment? A. No.

Q. What happened to the charge of unlawful assembly and of the conspiracy alleged against you? A. They were dropped.

Q. What happened to the assault and battery charge against you?

A. We pleaded nolle contendere.

Q. And what sentence did you receive for assault and battery in response to your plea of nolle contendere?

A. A \$200 fine, and one year in prison, suspended for one year, and on the second count a \$200 fine, and one year jail sentence, suspended one year——

(Testimony of Mac Masato Yamauchi.)

Q. Is this the sentence and judgment of the Court in respect to these two cases? (Showing document to the witness)

A. Yes.

Judge Biggs: Mrs. Bouslog, I don't want to interfere with your presentation, but this witness is a layman after all, and if he received a sentence——

Mrs. Bouslog: I was just showing him his own name.

Judge Biggs: Well, it is stipulated, as I understand, that these are the sentences. The objection is as to their relevancy.

Q. Did the prosecution and the Court know at the time the [59] sentence was imposed upon you for assault and battery that you were not present at the time any assault and battery occurred?

A. Yes——

Mr. Crockett: To which we object, if the Court please. She is asking the witness what the witness what the prosecution and the Court knew.

Judge Biggs: I don't see how the witness can testify as to what was in the prosecution and the Court's mind. Sustain the objection.

Mrs. Bouslog: All right, your Honor, the sentences which I will offer——the papers show he was not present at either the unlawful assembly or through the riot.

Mr. Crockett: That is a subject for argument.

Judge Biggs: You offer these now?

Mrs. Bouslog: Yes. The indictment shows on its fact that Mr. Yamauchi was not charged with being

(Testimony of Mac Masato Yamauchi.)

present at the time when any assault and batteries were committed.

Judge Biggs: He has already stated that he was not present. That is his testimony.

Mrs. Bouslog: That's right.

Judge Biggs: Let them be marked please. Exhibit number 7

(Documents offered in evidence are received and marked: "Plaintiffs' Exhibit No. 7.") [60]

Plaintiff's Exhibit No. 7

In the Circuit Court of the Second Judicial Circuit,
Territory of Hawaii

Cr. No. 2380

January Term, A. D. 1946

TERRITORY OF HAWAII

vs.

MAC MASATO YABAUCHI, MASARU MIZ-
OMI, SILVEIRO BUCANEG, ROQUE OMI-
SOL, KOSEI TOYAMA, MASANOBU KA-
WAHARA, JOSE SULLIBAN, TAKEO
TAIRA, MASAO KAITA, WILLIAM SEA-
BURY,

Defendants.

JUDGMENT AND SENTENCE OF COURT

The Grand Jury of the Circuit Court of the Second
Judicial Circuit of the Territory of Hawaii on the

(Testimony of Mac Masato Yamauchi.)

12th day of December, 1946, having returned an indictment against Mac Masato Yamauchi, one of the defendants above named, charging the said defendant in said indictment with Riot, in the First Count, Conspiracy in the Third Degree, in the Second Count, and Assault and Battery, in the Third County thereof;

And the said Defendant having been arraigned in the said Court upon such indictment in the manner and form as by law required on the 28th day of December 1946 plead *nolo contendere* to and by the Court was thereupon found guilty of the charge of Assault and Battery as alleged in the Third Count of said indictment.

And the Defendant, on the 28th day of December, 1946, having appeared in this Court and cause for Judgment and Sentence, and no lawful reason being given to the Court why such Judgment and Sentence should not be imposed;

It is the Judgment and Sentence of This Court, upon the Third Count of said indictment that the said Mac Masato Yamauchi, be confined in the County Jail in the County of Maui for a period of one year and to pay a fine of \$150.00, costs remitted, such sentence of imprisonment to run consecutively to and to commence upon the expiration or termination of the sentences imposed by this Court upon this defendant in the case entitled "Territory of Hawaii vs. Mac Masato Yamauchi, et al.," being Criminal No. 2379 of said Court.

(Testimony of Mac Masato Yamauchi.)

However, it appearing to the satisfaction of this Court, that the ends of justice, and the best interest of the public as well as of the defendant, will be subserved by so doing,

It is Ordered, that upon payment of the fine herein imposed the execution of the above sentences of imprisonment shall be suspended for a period of Two Years from the date of this Order, subject to the terms and conditions contained in the Minute Order of this Court re Adult Probation dated and filed the 11th day of April 1946, which Order by reference is made a part hereof.

Dated, Wailuku, Maui, T. H. this 8th day of January 1947.

By the Court.

[Seal] /s/ D. W. TALLANT,
Deputy Clerk.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the Clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated at Wailuku, Maui, T. H., Jan. 8th, A. D. 1947.

/s/ LYONS K. NAONE, JR.,
Assistant Clerk, Circuit Court,
Second Circuit,
Territory of Hawaii.

Admitted.

[Endorsed]: Filed Jan. 8th, 1947.

(Testimony of Mac Masato Yamauchi.)

In the Circuit Court of the Second Judicial Circuit,
Territory of Hawaii

C. No. 2379

January A. D. 1946 Term

TERRITORY OF HAWAII

vs.

MAC MASATO YAMAUCHI, ICHIRO HIRATA,
ISAMI OGAWA, K. OBA, TAMIO SHIOT-
SUGU, HIROMI MISHIMA, HISASHI
TAGUCHI, SEICHI FUJIWARA, SIXTO
AQUINO, CIRILO SACOCO, FERNANDO
CALMA and CARLOS MILIAN,

Defendants.

JUDGMENT AND SENTENCE OF COURT

The Grand Jury of the Circuit Court, Second
Judicial Circuit Court, Territory of Hawaii, on the
12th day of December, 1946, having returned an
indictment against Mac Masato Yamauchi, one of
the defendants above named, charging the said
defendant in said indictment with riot, in the first
count, conspiracy in the third degree, in the second
count, and assault and battery, in the third and
fourth counts thereof,

And the said defendant having been arraigned in
the said Court upon such indictment in the manner
and form as by law required, on the 28th day of
December, 1946, plead nolo contendere to, and by

(Testimony of Mac Masato Yamauchi.)

the Court was thereupon found guilty of the charges of assault and battery as alleged in the third and fourth counts of said indictment.

And the defendant, on the 28th day of December, 1946, having appeared in this Court and cause for Judgment and Sentence, and no lawful reasons being given to the Court why such Judgment and Sentence should not be imposed.

It is the Judgment and Sentence of this Court that upon the third count of said indictment, the defendant Mac Masato Yamauchi be confined in the County Jail of the County of Maui for a period of one year and to pay a fine of \$200, costs remitted.

It is Further the Judgment and Sentence of this Court that upon the fourth count of such indictment, the defendant, Mac Masato Yamauchi, be confined in the County Jail of the County of Maui for a period of one year and to pay a fine of \$200, costs remitted, such sentence of imprisonment to run consecutively to, and to commence upon the expiration or termination of the sentence herein imposed upon the said defendant under the third count of said indictment.

However, it appearing to the satisfaction of the Court, that the ends of justice, and the best interest of the public as well as of the defendant, will be subserved by so doing,

It is ordered that upon payment of the fine herein imposed, the execution of the above sentences of imprisonment shall be suspended for a period of

(Testimony of Mac Masato Yamauchi.)

two years from the date of this Order, subject to the terms and conditions contained in the Minute Order of this Court re Adult Probation dated and filed the 11th day of April 1946, which Order by reference is made a part hereof.

Dated at Wailuku, Maui, T. H. this 8th day of January, 1947.

By the Court.

[Seal] /s/ D. W. TALLANT,
Deputy Clerk.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the Clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H., Jan. 8th, A. D.
/s/ D. W. TALLANT,
Deputy Clerk, Circuit Court,
Second Circuit,
Territory of Hawaii.

Admitted.

[Endorsed]: Filed Jan. 8th, 1947.

Mrs. Bouslog: I have no further questions, Mr. Crockett.

Cross-Examination

By Mr. Crockett:

Q. Do I understand you to say, Mr. Yamauchi,

(Testimony of Mac Masato Yamauchi.)

that the house rules provide that employees of the company can be dismissed for committing any offense within the town of Lahaina?

A. Yes.

Q. Could you give us the wording of that rule?

A. Well, we merely went on a strike, and did not want to violate any house rules.

Q. My question, again, is to give us the wording of those rules; the exact wording of the rules which provides you can be discharged for any offense committed within the town?

A. It says in the house rules if you violate any house rules you will be discharged from the company.

Q. Well, you still haven't answered my question, as to what the house rules say with reference to committing offenses?

A. I don't quite understand you.

Q. Well, it is a rule, for example, if an employee were arrested for speeding, for example, in the town of Lahaina, that he would be subject to dismissal by the company?

A. That all depends on the discreption of the person, and the judgment of the management.

Judge Biggs: Have you got a copy of that house rule? A. I haven't got it here. [61]

Mr. Crockett: At this time, if the Court please, we ask that counsel produce a copy of the house rule for the Courts' inspection.

Judge Biggs: Mrs. Bouslog stated in reply to

(Testimony of Mac Masato Yamauchi.)

the Court's question, directed precisely as your's is, Mr. Crockett, that she would produce or have a witness produce the house rules at a later time. Is that your offer?

Mrs. Bouslog: Yes.

Q. Well, isn't it a fact that those house rules provide for only offenses committed on plantation property, or which may have to do with relations between the employees, or, you might say, the workers, and their superiors, isn't that right?

A. Yes.

Q. That is all it has to effect, isn't that right?

A. Yes.

Q. And it only applies to such offenses as might occur under those circumstances?

A. Yes.

Q. Who were these persons named in this indictment that this assault and battery are alleged to have been committed upon? That is to say, who was this James B. Backman. Who was he?

A. He was a supervisor in the mill.

Q. And when did this assault and battery take place? A. Out in Olowalu. [62]

Q. Was that on plantation property?

A. Yes

Q. Was he engaged in plantation work at that time? A. He was irrigating.

Q. Irrigating plantation cane? A. Yes.

Q. How about Michael Nelson, was he also one of the supervisors on the plantation? A. Yes.

(Testimony of Mac Masato Yamauchi.)

Q. Whereabouts did the assault take place?

A. At the same place.

Q. In the plantation field? A. Yes.

Q. Was he also irrigating the cane?

A. That's right.

Q. And then the third person named in the other indictment, Harlow Wright, where did that assault take place?

A. About half a mile away from the previous scene.

Q. Was that also on plantation property?

A. Yes.

Q. What was he doing at the time when the assault was committed on him?

A. He was irrigating also.

Q. He was also an employee of the plantation?

A. Yes. [63]

Q. What was his normal employment?

A. I believe at that time he was the personnel director.

Q. Now you state that you were not present when these assaults were committed? A. No

Q. Your official position was what?

A. Strike strategy committee foreman.

Q. And isn't it a fact, Mr. Yamauchi, that those persons who are charged with and who actually committed the assault were sent out in the field with the express direction from you to stop these men from doing plantation work in which they were engaged?

(Testimony of Mac Masato Yamauchi.)

A. Well, I ordered them to try to persuade them not to irrigate.

Q. You sent them out? A. Yes.

Q. And they were persuading them not to irrigate? A. Tro, not to irrigate.

Q. And that is the reason you were charged with being connected with this particular case?

A. Yes.

Q. And you entered a plea of guilty?

A. Nolle contendere.

Q. Were you represented by counsel when that plea was entered? A. Yes. [64]

Q. Who was your counsel?

A. Mrs. Harriett Bouslog.

Redirect Examination

Judge Biggs: Any more questions, Mrs. Bouslog, of this witness?

Mrs. Bouslog: Nothing more.

(Witness excused.)

Judge Biggs: Let's see if we can get in one more witness by the next recess.

NICHOLAS C. SIBOLBORO

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs Bouslog:

Q. Will you state your name for the Court, please.

(Testimony of Nicholas C. Sibolboro.)

A. Nicholas C. Sibolboro.

Q. Where do you live, Sibolboro?

A. I live at Wahiawa.

Q. By what company are you employed?

A. At the present time I am employed at the ILWU.

Q. What one of the pineapple companies?

A. Libby, McNeill & Libby.

Q. Were you a member of the union at the time of the pineapple lockout in July, 1947?

A. Yes. [65]

Q. What was your official capacity during that strike?

A. I was a picker.

Q. Were you arrested during the pineapple strike?

A. Yes, Madam.

Q. Where were you arrested?

Mr. Crockett: To which we object, if the Court please, as having no bearing whatever on the issues of this case.

Judge Biggs: Will you explain why, Mr. Crockett?

Mr. Cockett: Why it has no bearing; in the first place it occurred on the island at Wahiawa; it was on this island, of Oahu. The incidents which are before the Court are instances which occurred on the island of Maui, principally, and the island of Lanai, which is in the County of Maui, and as prosecuting officer I only have jurisdiction on those islands. I have nothing whatever to do with conditions here on Oahu, and in view of the circum-

(Testimony of Nicholas C. Sibolboro.)

stances we submit that they might go out and bring in a thousand persons who might present to the Court some force used or something that happened on the island of Oahu, which was not pertinent to something that took place on the island of Maui.

Judge Biggs: What have you to say in respect to that?

Mrs. Bouslog: I am offering this on the fact that the union charges the Attorney General is the defendant in this action, which includes all the counties of the Territory.

(Argument by counsel.) [66]

Judge Biggs: The Court entertains some doubt in this matter, and if we had a jury present we would have to make a ruling on it. I am inclined, however, to receive it subjection to the objection, and subject to a motion to strike

Mr. Crockett: May I add a further objection to this, that counsel has stated that the existence of this statute constitutes a previous restraint.

Mrs. Bouslog: That is our contention.

Mr. Crockett: As to previous restraint, I feel that that is a matter of law, and certainly not subject to the views of any particular individuals. In rebuttal to this man's testimony we might go out and get hundreds of people who feel that is not previous restraint.

Judge Biggs: Yes, but unless this witness brings his answers to the question—as to the particular effect upon him, the matter will be inadmissible.

(Testimony of Nicholas C. Sibolboro.)

Miss Lewis: May I ask whether, Mrs. Bouslog, the Attorney General directed that these charges be placed?

Judge Biggs: Miss Lewis has directed a question to you. Do you propose to answer the question, or not?

Mrs. Bouslog: Will you repeat the question, Miss Lewis?

Miss Lewis: I asked whether you proposed to show that the Attorney General had personally directed that this [67] charge be placed?

Mrs. Bouslog: I don't think, your Honor, that where the charge, acting under the color of law——

Judge Biggs: Will you answer the question, if you want to. We are not compelling you to answer it.

Mrs. Bouslog: Our answer to the question, and in fact the whole theory of our proof, is that the Attorney General is personally responsible and has directed the full force of these laws against the working people in the Territory, in an unfair and discriminatory manner.

Miss Lewis: That is your theory, but you are not offering to prove that the Attorney General had anything to do with the placing of this charge, is that correct?

Mrs. Bouslog: Through his officers and agencies, who are also police officers in the Territory, he is responsible

Judge Biggs: Let's not have argument here on

(Testimony of Nicholas C. Sibolboro.)

something that has to be argued later. Suppose you proceed with the questions, and not with an unfruitful exchange.

Q. On what date were you arrested, Mr. Sibolboro? A. I was arrested July the 13th.

Q. Were there any other people arrested with you?

A. Yes, sir, Madam, there were seven with me, and eight, together with me, rather.

Q. What day of the week was the 13th, if you know? [68]

A. That was Sunday, I believe.

Q. And what time of the day was it when you were arrested?

A. I am not exactly sure about the exact date, but it was sometime between 9 and 10 in the morning.

Q. After you were arrested what did the police officer say he was charging you with at the time he arrested you? A. Nothing

Q. He arrested you without saying anything. What did they do after that time?

A. Put us in the police station at Wahiawa.

Q. When you were at the police station in Wahiawa were there any other union persons being held there? A. No, Madam.

Q. Were there any other union persons arrested and brought into the Wahiawa station after that?

A. About two hours later.

Q. How many? A. There were 85, I think.

(Testimony of Nicholas C. Sibolboro.)

Q. Altogether how many union members were being held in the Wahiawa Police Station?

A. 93.

Q And what happened after that time?

A. Well, they just let us stay in the police station, and when it was about four o'clock in the afternoon they sent us over to the Honolulu Police Station. [69]

Q. And after you arrived at the Honolulu police station how long did you remain there?

A. I have been there until about 11 o'clock in the evening.

Q. About 11 o'clock. A. Yes.

Q. So that made 85, you were there with the other people, too? A. With the rest of them.

Q. Where were you——

Judge Biggs: Let's get the number straight. You used the figure 85, and the witness says 93.

Mrs. Bouslog: 93 is the correct figure.

Judge Biggs: Which was it?

Witness: I was with the 93

Q. And at approximately 11 o'clock you and the other union people were released from the police station? A. Yes.

Q. How much was your bail, do you recall?

A. I really cannot recall that.

Q. Were you charged with unlawful assembly at that time? A. No.

Q. What were you charged with?

A. According to the Judge, he gave me a six

(Testimony of Nicholas C. Sibolboro.)

month's suspended sentence, we were blocking the road or highway, or whatever it is.

Q. Obstructing the highway? [70]

A. Maybe.

Mrs. Bouslog: No further questions.

Cross-Examination

By Miss Lewis: May we reserve our cross-examination We had not understood that the proof would go into matters of the City & County of Honolulu, which are certainly not within our——

Judge Biggs: Will this witness be available?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: You may reserve your cross-examination and the Court will take a 5-minute recess.

(To witness) You will remain until they have an opportunity to cross-examine you.

(Temporarily excused.)

(Recess.)

Mrs. Bouslog: Your Honor, I have subpoenaed a witness from another island, and his testimony is not exactly in order, as it bears on the Grand Jury, but for his convenience I would like and appreciate being allowed to call him out of order.

Judge Biggs: Call him out of order.

CHARLES C. YOUNG

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please, Mr. Young? [71] A. Charles C. Young

Q. Where do you live, Mr. Young?

A. Wailuku, Maui.

Q. What is your employment?

A. I am the assistant manager of the Maui Publishing Company.

Q. Are you an officer of the Chamber of Commerce on Maui?

A. I have been president of the Maui Chamber of Commerce since January 1st of this year.

Q. Did you bring with you the original list of members of the Maui Chamber of Commerce as of May, 1947?

A. I have a list of the members of the Maui Chamber of Commerce as of June 30, 1947, and as of April 22, 1948.

Q. That membership in June, 1947, would be approximately the same as May, 1947?

A. That's right

Q. Did you bring with you the resolution and copy of a resolution adopted by the Maui Chamber of Commerce relative to the pineapple situation in May of 1947?

A. I would like to explain that the Maui Chamber of Commerce has no paid manager or executive

(Testimony of Charles C. Young.)

secretary. I am the president of the Maui Chamber of Commerce, and Mr. Franklin E. Skinner is the secretary, and that is in addition to doing his regular work, and I received this 'phone call from the president—the vice president of the Chamber of Commerce at 2:30 yesterday afternoon, and Mr. Skinner was attending the school [72] commissioners' conference on the Island of Molokai. The only thing I have, of the incidents which you are referring to, I have the minutes, a copy of the minutes, of that meeting.

Q. But you don't have a copy of the resolution itself? A. I do not.

Q. Were you present at the time that resolution was adopted?

A. I don't believe that a resolution was adopted.

Q. But you have with you a copy of the radiogram sent to Washington relative to the pineapple situation?

A. I find no record of a telegram being sent to Washington

Q. Do you have with you a copy of the radiogram sent to Washington—or do you have the original record showing the members who were present at the time of voting upon the telegram. You find neither the resolution nor the telegram?

A. No, I do not.

Q. Did you say you are connected with the Maui News, Mr. Young?

A. I am the assistant manager, yes, Madam.

(Testimony of Charles C. Young.)

Q. I will show you an envelop; clippings—news-paper clippings. (Handing papers to witness.) Does that look to you as if it comes from the paper, the Maui News?

A. It looks like our type.

Q. Will you read it carefully and see if you can tell whether its contents definitely are from your paper; whether [73] it does or not?

Judge Biggs: Don't read it out loud. Read it to yourself? A. That's right.

Q. That is from the Maui News?

A. That's right.

Q. But you personally have no recollection of being present at a meeting at which this report shows that the same resolution adopted by the Chamber of Commerce over here was unanimously adopted by the Chamber of Commerce at Maui?

A. I was at that hearing, yes.

Q. Do your minutes show anything in relation to the adoption of such a resolution?

A. I have the original minute book of that particular meeting. It was not in May, however. I have made a copy of that meeting from the secretary's record, under his signature. Do you want me to read it?

Q. Yes, please.

A. Minutes of special meeting held at the Maui Country Club on Friday, June 20, 1947, at 3 p.m. Present: 47 members. The officers were present, with president Andrew Moodie presiding. Radio

(Testimony of Charles C. Young.)

broadcast from McKinley High School. The members listened to radio broadcast from McKinley High School in Honolulu. This broadcast was sponsored by the Honolulu Chamber of Commerce and presented speakers who are parties [74] to the present uncertain conditions concerning labor problems in Hawaii. At the conclusion of the broadcast the members endorsed a resolution which had been adopted by the board of directors of the Honolulu Chamber of Commerce dealing with the strike situation in Hawaii. President Moodie was asked to contact the Honolulu Chamber of Commerce, in regard to urging the United States Senate to override President Truman on the Labor Act. This motion was made by Mr. Ezell, and seconded by Mr. Woolaway.

Future plans and policies. Mr. Elsmere and Mr. C. C. Young lead the discussion concerning future plans and policies of the Maui Chamber of Commerce and the president appointed the following special committee to prepare such future policies and plans: Chairman, A. D. Woolaway. Members: Dohn, Young, Elsmere, Iichikai Machida, R. Uyeoka. This committee held a meeting following adjournment in order to discuss some of the issues involved. Adjournment: The meeting adjourned at 5:10 p.m. Respectfully submitted: F. B. Skinner, Secretary.

Q. Is this book from which you are reading the record of the Secretary of the Chamber of Commerce?

(Testimony of Charles C. Young.)

A. It is the Maui Chamber of Commerce minute book, from January, 1935.

Q. And I assume this has been regularly kept by the secretaries of the Association? [75]

A. Yes, sir. "Mr. Young" is myself.

Q. Mr. Young, you say the secretary of the association—of the organization, was not on the island of Maui at the time when you were contacted regarding the subpoena?

A. Yes, Madam.

Q. Would the secretary have copies of the resolution adopted together with the members who voted, or were the members——

Judge Biggs: Let me interrupt, please.

This is the resolution which Mr. Young has read. What more do you want?

Mrs. Bouslog: Well, the resolution deals specifically with the pineapple dispute.

Judge Biggs: Oh, I see.

Q. Can you tell, or do you know of your own knowledge whether the Elsmore referred to in these minutes is the same E. Stanley Elsmore who is the foreman of the Grand Jury for 1947, in Maui County; the 1947 Grand Jury?

A. He is the only Elsmore I know of on the island of Maui.

Q. E. Stanley Elsmore?

A. Yes, E. Stanley Elsmore I would like to add——

Judge Biggs: Yes, go ahead.

(Testimony of Charles C. Young.)

A. I would like to add, however, that the future plans and policies of this committee that is named here, on the future plans and policies of the Maui Chamber of Commerce, did not pertain to any strike issue. That part of the meeting was [76] dissolved, and some of us thought that we should do something to fill up our Chamber of Commerce—build it up, and we had a bigger group, larger than we normally have, so this committee was appointed to lay plans for the Maui Chamber of Commerce, for the future, and try to build it up.

Q. Were you the author of this article in the Maui News? A. I don't believe so.

Q. Well, would the Secretary, the regular Secretary, have copies of the resolution itself, about conducting—the plans for the pineapple strike in the pineapple industry?

A. Not having talked with him, I would not say.

Q. But you believe that this is a true report of the resolution similar to the one——

Judge Biggs: Why don't you approach it from the more practical angle.

Q. (By Judge Biggs): Was this witness present at the meeting when the resolution was passed?

Q. Were you present at the meeting when the resolution was passed? A. I was.

Q. And the resolution was substantially in the form as that adopted by the Junior Chamber of Commerce in Honolulu?

A. By the Senior Chamber of Commerce in

(Testimony of Charles C. Young.)

Honolulu. The resolution was read and was adopted by a show of hands.

Q. I will show you a copy—— [77]

Judge Biggs: If you are going to ask this witness whether or not, or by the resolution which was adopted——

Mrs. Bouslog: No, your Honor, I am not. I am not going to ask in that particular respect. I am going to ask the Court's permission, and perhaps the defendants will stipulate, that that be done; that we get in touch with the secretary to discover if he has a copy of the resolution, the resolution which was adopted at the meeting pertaining to the pineapple situation.

Judge Biggs: You may handle that as you see fit.

Mrs. Bouslog: May we have the Court's permission to submit subsequently such a resolution with the certificate of the Secretary of the Chamber of Commerce that it was the resolution adopted.

Judge Biggs: Could we so stipulate, Mr. Crockett?

Mr. Crockett: I have no objection to making such a stipulation, subject to our objection as to relevancy.

Judge Biggs: As to relevancy. Mrs. Bouslog, you may have the Court's permission to do that.

(Testimony of Charles C. Young.)

PLAINTIFF'S EXHIBIT No. 8

Maui Chamber of Commerce

Territory of Hawaii

Wailuku, County of Maui

April 29, 1948.

Mrs. Harriet Bouslog

Attorney-at-Law

Pier 11, Honolulu, T. H.

Dear Mrs. Bouslog:

Our president, Mr. Charles C. Young, has asked me to send a reply to your recent telephone call which concerned certain local Chamber of Commerce matters.

In answer to your first question, may I state that our Chamber held a special meeting on June 20, 1947, at which the members endorsed a resolution which had been adopted by the Honolulu Chamber of Commerce and dealt with the labor situation in Hawaii.

No telegram was sent by this Chamber to any member of the United States Senate, urging the members of the Senate to over-ride President Truman's veto of the Labor Act.

Very truly yours,

/s/ F. E. SKINNER,

Secretary.

(Testimony of Charles C. Young.)

RESOLUTION ADOPTED BY BOARD OF
DIRECTORS, CHAMBER OF COMMERCE
OF HONOLULU, JUNE 5, 1947, CONCERN-
ING STRIKE SITUATION IN HAWAII.

Text of Resolution

Whereas, the welfare of the people of Hawaii and the economy of the Islands are threatened with ruin by strikes, and

Whereas, during the past year and a half there have been 35 strikes called by local union leaders resulting in the loss of 1,925,000 man-days of production, and the loss of \$8,500,000 in wages, and

Whereas, some of these strikes were in direct violation of contracts which some union leaders signed with employers, and others were outside the scope of legitimate union activity, and

Whereas, these strikes resulted in mass picketing, violence and intimidation, attacks upon our courts, attempts to enforce monopoly agreements, preaching of hatred and contempt for employers, threats of jurisdictional wars to come, and the grasping for more and more despotic control by some union leaders, and

Whereas, there is the very real threat of an industry-wide pineapple strike, timed to take place at the peak of the season when the ripe fruit must be harvested or lost, and

Whereas, such a strike would mean the loss of about \$9,500,000 in wages; loss of a major part of a \$60,000,000 crop, if not harvested; loss in tax reve-

(Testimony of Charles C. Young.)

nues to the Territory, and the loss of employment for about 22,000 people, including summer work for students, and

Whereas, ILWU stevedore leaders have threatened to strike the ports of the Territory, and

Whereas, such a strike would cut off Hawaii's vital shipping lifeline, and result in acute suffering to the people of the Territory, with the loss of livelihood for many, and

Whereas, these strikes if continued can mean the destruction of our basic industries and trade, our jobs and our future,

Therefore Be It Resolved, that the Board of Directors of the Chamber of Commerce of Honolulu vigorously condemns such irresponsible union leadership and union tactics as threaten to disrupt Hawaii's economy and ruin her industries, and

Be It Further Resolved, that union members themselves be urged to take an active part in their union affairs and by so doing help make unions in Hawaii responsible and respected organizations, and

Be It Further Resolved, that the people of the Territory be alerted to the dangers of continued strikes, and

Be It Further Resolved, that the Board of Directors of the Chamber of Commerce of Honolulu goes on record as recognizing the right of employees to organize and bargain collectively whenever such action is the result of their own free choice, but also as unalterably opposed to violence, intimidation, and coercive methods by either labor or management, and

(Testimony of Charles C. Young.)

Be It Further Resolved, that copies of this resolution be forwarded to all members of the Chamber of Commerce of Honolulu, appropriate government officials, editors and publishers, business and civic leaders urging them to pass similar resolutions and unite in a community program to establish sound and constructive employer-employee relations in Hawaii Nei.

Q. Mr. Young, I will hand you a certified copy of a list of grand jurors for the 1947 term of the second circuit court. Your Honor, this pertains to 836.

Judge Biggs: If you are going to have the witness examine the list, you should introduce it in evidence so we may have something to refer to.

Mrs. Bouslog: It is already in the record in the 1947 grand jury. I have merely used this copy. The 1947 grand juror list is a part of the record by stipulation.

Judge Biggs: Very well.

Q. (By Mrs. Bouslog): Will you examine this list, Mr. Young, and determine which of these people were members of your organization?

Mr. Crockett: If the Court please, we object on the ground it is absolutely irrelevant as to whether members of the grand jury were members of the Chamber of Commerce. It has no bearing whatsoever on the case.

(Testimony of Charles C. Young.)

Judge Biggs: I take it this is preliminary to some point that you intend——

Mrs. Bouslog: That is correct, your Honor, that the purpose of the resolution pertaining particularly to the pineapple strike where a large number of plaintiffs are involved, shows actual economic bias and prejudice existed in the community. It shows that the foreman of the grand jury and a number of members of the grand jury actually participated in [79] condemning the union and the people who were involved in it.

Mr. Crockett: At this time we would like to add, if your Honor please, that the record shows already that the attorneys in this matter had full opportunity to examine the grand jurors individually, and this particular matter was not brought to their attention.

Judge Biggs: We note your objection and the Court will make the same ruling as before, note an exception, and the Court will treat the matter as being subject to a motion to strike. Proceed.

Mrs. Bouslog: Your Honor, I might suggest to the Court, to save the Court's time, if this witness could compare the 1947 grand jury list with his membership list.

Judge Biggs: I assumed that was what you were going to ask him to do.

Mrs. Bouslog: Out of Court. It wouldn't take the Court's time while we call them off.

Judge Biggs: Very well, let him compare them,

(Testimony of Charles C. Young.)

leave the witness stand and compare them, and call your next witness; and Mr. Young, will you remain in attendance until this matter is cleared up.

(The witness was excused temporarily.)

JOSEPH K. KAHOLOKULA,

a witness called by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows: [80]

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name and spell it for the clerk, Mr. Kaholokula?

A. The name is Joseph K. Kaholokula, K-a-h-o-l-o-k-u-l-a.

Q. Where do you live, Mr. Kaholokula?

A. At the present moment I am living at Haiku, Maui.

Q. How long have you lived on Maui?

A. All my life.

Q. Are you a member of the International Longshoremen's and Warehousemen's Union?

A. Yes, I am.

Q. How long have you been a member?

A. Since it was organized in 1944.

Q. Do you hold any office under the territorial government?

A. Yes, I am. I am serving as a legislator from the Third District, Island of Maui.

(Testimony of Joseph K. Kaholokula.)

Q. What does the Third District comprise?

A. It comprises the Island of Maui. The Third District is, I don't get your question.

Q. I say what territory does the Third District take in? A. The Territory of Hawaii.

Q. Well, I mean, is it all Maui County?

A. Maui County, Lanai and the Island of Molokai, including Kalaupapa.

Q. (By Judge Biggs): Is the last place named a separate [81] island?

A. It is not a separate island, but that is a settlement where the lepers are.

Judge Biggs: Oh, I see, the leper settlement, yes.

Q. (By Mrs. Bouslog): Now were you an officer of the ILWU at the time of the 1946 sugar strike?

A. Yes, I am the president. I was president of that local.

Q. What local was that? A. Local 144.

Q. What did Local 144, what companies did that include?

A. It included the pineapple, the longshoremen, a miscellaneous group and the sugar.

Q. All through the Island of Maui?

A. Yes, ma'am.

Q. And other counties also?

A. No, ma'am.

Q. It didn't include Lanai or Molokai?

A. No.

(Testimony of Joseph K. Kaholokula.)

Q. Are you the same Joseph Kaholokula who is a defendant in this case before the Court?

A. Yes.

Q. And you have been indicted by the grand jury of Maui County for the Unlawful Assembly Statute?

A. That's right.

Q. Will you tell the Court what happened the morning of [82] September 16, 1946, at Paia, Maui?

A. At about five-thirty that morning I arrived at the scene and took part in the picketing with the rest of the boys. I felt being president of that local I should participate by doing part of the work that they were doing, so I walked with the boys. At about six-thirty I noticed on the opposite side of the road five scabs, and so I walked over and spoke with some of the police officers that were on the other side. Then Assistant Chief Freitas of the County of Maui, called the union group together that were picketing and read the law to them, and after that was over Captain Long walked over to one of the union boys, Benny Awana and spoke to him. Whatever took place between the two of them I do not know, I know nothing of that, of the conversation. Then a few minutes after that these so-called five scabs that I mentioned was walking with the assistance of the police officers. At that time the boys were still in a group. It was after Chief Freitas got through; they were still dazed and did not know what was what, when this group came, and I noticed that one of the boys did bump into this

(Testimony of Joseph K. Kaholokula.)

Benny Awana, and when this happened there was confusion among the members and the scabs, and all I heard was, "That's all boys, there is nothing else you can do," and the boys, the scabs walked on the opposite side and stayed there. Right after that myself and the Assistant Chief—I forgot whether we went in his car or in mine—we went and had breakfast.

Q. Did he say anything to you that he was going to arrest all those people?

A. No, ma'am, there was no arrest at that particular time. There was no arrest.

Q. Did picketing go on up there for the rest of the day? A. Yes, ma'am.

Q. Did anybody get hurt? A. No, ma'am.

Q. Did anybody get a scratch of any kind?

A. No, ma'am, there was no such thing.

Q. Did the police officers order the union boys to go home?

A. No, I never heard that. If there was anything said, I wasn't present at that time. I left, as I stated just a few moments ago, I left with Chief Freitas.

Q. Do you know what law it was that was read?

A. No, ma'am; I wasn't interested in that, because I was talking to some of the boys.

Q. Is this a copy of the indictment that was served upon you, or the original of the indictment that was served on you?

Mr. Crockett: We will stipulate that it is.

(Testimony of Joseph K. Kaholokula.)

Judge Biggs: It is so stipulated.

A. Yes, ma'am.

Q. This indictment was returned by the 1946 grand jury?

Judge Biggs: That appears from its face, does it not? [84]

Mrs. Bouslog: I don't believe it is a part of the record. I will offer it in evidence and ask the Court's permission to substitute a cleaner copy at a later time.

Judge Biggs: You may do so. This is number 9.

(The document referred to was marked Plaintiff's Exhibit No. 9 and received in evidence.)

PLAINTIFF'S EXHIBIT No. 9

In the Circuit Court of the Second Judicial Circuit,
Territory of Hawaii, January, A.D. 1946,
Term

TERRITORY OF HAWAII

vs.

JOSEPH KAHOLOKULA, LEVI KEA-
loha, Benjamin Kahaawinui, Benjamin Awana,
Leocadio Baldovi, Soichi Doi, Yoshio Nagata,
Lionel Hanakahi, Jack Hao, Koichi Ito, David
Kina, George Kukahiko, Charles Reveira, Take-
shi Shimano, Abreu, Joseph Sebastin; Ah Lee
Sam, Richard; Alvares, Frank R.; Apo, Lam-

(Testimony of Joseph K. Kaholokula.)

bert; Auwelo, William; Boteilho, Alfred; Boteilho, Harry; Callido, Antone; Coelho, Thomas; Corniel, John; Cravalho, John; Corniel, Daniel; Cason, Calixtro; Doi, Kiyoto; Feiteira, Ernest; Flores, James Beristo; Franco, Frank; Franco, Julio; Fernandez, Ernest; Fukushima, Hiroshi; Fukushima, Pulehu; Gouveia, Antone; Herreira, Louis; Hu, Joseph; Hara, Juan; Higa, James F.; Jardin, Edward Gomes; Kim Choo Hai; Kaea, Ernest; Kaio, John; Kealoha, Solomon; Lacio, Martin; Lindsey, George; Martins, George; Medeiros, Fred Carlos; Moniz, Charles Paulos; Matsui, Frank; Nascimento, John; Nakasone, Buta; Nishimura, Johnny; Ogata, Kiyoto; Ortiz, John; Pacheco, Lawrence Torres; Perreira, Alfred; Perry, Raphael; Pico, Manuel Perreira; Ponce, Henry Leopoldo; Ponce, Manuel; (D.D.) Peters, Joe; Ponce, Joseph; Ramos, Rosario; Sasaoka, Tarochi; Sera, Hitoshi; Shiroma, Lawrence E.; Soto, Fermin; Sakaida, William; Takemura, Edward; Taniguchi, Robert; Tomita, Dondo; Tomita, Takeji; Tosaka, Kiyoshi; Vierra, Antone S.; Yoneda, Masaru; Yasunaga, Roy.

INDICTMENT

Riot and Unlawful Assembly

First Count

The Grand Jury of the Second Judicial Circuit of the Territory of Hawaii, do present that Joseph Kaholokula, Levi Kealoha, Benjamin Kahaawinui,

(Testimony of Joseph K. Kaholokula.)

Benjamin Awana, Leocadio Baldovi, Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shimano, Joseph Sebastin Abreu, Richard Ah Lee Sam, Frank R. Alvares, Lambert Apo, William Auwelo, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Calixtro Co-son, Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herreira, Joseph Hu, Juan Hara, James F. Higa, Edward Gomes Jardin, Hai Choo Kim, Ernest Kaea, John Kaio, Solomon Kealoha, Martin Lacio, George Lindsey, George Martins, Fred Carlos Medeiros, Charles Paulos Moniz, Frank Matsui, John Nascimento, Buta Nakasone, Johnny Nishimura, Kiyoto Ogata, John Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Henry Leopoldo Ponce, Manuel Ponce (D.D.), Joe Peters, Joseph Ponce, Posario Ramos, Taroichi Sasaoka, Hitoshi Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Takemura, Robert Taniguchi, Dondo Tomita, Takeji Tomita, Kiyoshi Tosaka, Antone S. Vierra, Masaru Yoneda, Roy Yasunaga, together with divers other persons whose names are to the Grand Jury unknown, at Paia, County of Maui, Territory of Hawaii, on to wit, the 16th day of October, 1946, then and there being of their own author-

(Testimony of Joseph K. Kaholokula.)

ity assembled together with disturbance, tumult and violence and striking terror or tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence, to wit, assaulting, shoving, pushing and using menacing language and gestures and other hostile signs and demonstrations, tending and intending to strike terror into others, to wit, Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden and others, then and there being, contrary to the form of the statute in such cases made and provided.

Second Count

And in order to set forth the unlawful and felonious acts of the defendants above named with reference to the acts and transactions mentioned in the first count hereof in different form and count in order to meet the proof, the Grand Jury aforesaid, do further say and present that Joseph Kaholokula, Levi Kealoha, Benjamin Kahaawinui, Benjamin Awana, Leocadio Baldovi, Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Revereira, Takeshi Shimano, Joseph Sebastin Abreu, Richard Ah Lee Sam, Frank R. Alvares, Lambert Apo, William Auwelo, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Calixtro Coson,

(Testimony of Joseph K. Kaholokula.)

Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herreira, Joseph Hu, Juan Hara, James F. Higa, Edward Gomes Jardin, Hai Choo Kim, Ernest Kaea, John Kaio, Solomon Kealoha, Martin Lacio, George Lindsey, George Martins, Fred Carlos Medeiros, Charles Paulos Moniz, Frank Matsui, John Nascimento, Buta Nakasone, Johnny Nishimura, Kiyoto Ogata, Josh Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Henry Leopoldo Ponce, Manuel Ponce (D.D.), Joe Peters, Joseph Ponce, Rosario Ramos, Taroichi Sasaoka, Hitoshi Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Takemura, Robert Taniguchi, Dondo Tomita, Takeji Tomita, Kiyoshi Tosaka, Antone S. Vierra, Masaru Yoneda, Roy Yasunaga, together with divers other persons whose names are to the Grand Jury unknown, at Paia, County of Maui, Territory of Hawaii, on to wit, the 16th day of October, 1946, of their own authority, did unlawfully and feloniously assemble together with disturbance, tumult and violence, to wit, by then and there assaulting, shoving, pushing and using menacing language and gestures and making other hostile signs and demonstrations toward, and thereby striking terror and tending and intending to strike terror into, others, to wit, Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholo-

(Testimony of Joseph K. Kaholokula.)

kula and Conrado P. Corden and others then and there being, contrary to the form of the statutes in such cases made and provided.

Third Count

And in order to set forth the unlawful and felonious acts of the said defendants with reference to the acts and transactions mentioned in the First Count hereof in different form and count in order to meet the proof, the Grand Jury aforesaid do further say and present that Joseph Kaholokula, Levi Kealoha, Benjamin Kahaawinui, Benjamin Awana, Leocadio Baldovi, Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shimanono, Joseph Sebastin Abreu, Richard Ah Lee Sam, Frank R. Alves, Lambert Apo, William Auwelo, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Calixtro Coson, Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herrera, Joseph Hu, Juan Hara, James F. Higa, Edward Gomes Jardin, Hai Choo Kim, Ernest Kaea, John Kaio, Solomon Kealoha, Martin Lacio, George Lindsey, George Martins, Fred Carlos Medeiros, Charles Paulos Moniz, Frank Matsui, John Nascimento, Buta Nakasone, Johnny Nishimura, Kiyoto Ogata, John Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira

(Testimony of Joseph K. Kaholokula.)

Pico, Henry Leopoldo Ponce, Manuel Ponce, Joe Peters, Joseph Ponce, Rosario Ramos, Taroichi Sasaoka, Hitoshi Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Takemura, Robert Taniguchi, Dondo Tomita, Takeji Tomita, Kiyoshi Tosaka, Antone S. Vierra, Masaru Yoneda, Roy Yasunaga, together with divers other persons whose names are to the Grand Jury unknown, at Paia, County of Maui, Territory of Hawaii, on to wit, the 16th day of October, 1946, of their own authority did unlawfully and feloniously assemble together with intent to, and did, aid, countenance, incite and encourage each other, by conduct striking and tending and intending to strike terror into others, including certain employees of the Maui Agricultural Company, Limited, a Hawaiian corporation, namely, Benedict Nelso Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden and others, to wit, by disturbance, tumult and violence and menacing language and hostile signs and demonstrations, to prevent said employees from entering the premises of said corporation for the purpose of proceeding to the place of and engaging in their employment, thereby unlawfully depriving said Benedict Nelson Souza, William Moniz, William K. Kaholokula and Conrado P. Corden of their rights and endangering the liberty of the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden contrary to the form of the statutes in such cases made and provided.

(Testimony of Joseph K. Kaholokula.)

A True Bill found this 30th day of October, 1946.

/s/ WENDELL F. CROCKETT,

Prosecuting Officer,

County of Maui.

/s/ D. DEASE,

Foreman of the Grand Jury.

Admitted.

Q. Have you ever known, or do you know a man by the name of Jose Pias?

A. That's right, I do know him.

Q. Was he alive on October 16, 1946?

A. No, ma'am, he is dead.

Q. How long had he been dead at that time?

A. About four years.

Q. And is that the same one who appears as having been indicted by the grand jury?

A. That's right, ma'am.

Judge Biggs: I am not clear as to what you have proved. Have you proved the grand jury indicted a man who had been dead a number of years at the time of the occurrences?

Mrs. Bouslog: Yes, your Honor. I think it was discovered he was dead when there was an attempt to serve the indictment on him and it was stricken at that time, and the copy shows a line through it.

Judge Biggs: The indictment will speak for itself.

Q. (By Mrs. Bouslog): Now, you say you had

(Testimony of Joseph K. Kaholokula.)

breakfast with Chief Freitas after the incident happened? [85] A. Yes, ma'am.

Q. How soon were you arrested after this happened? A. Oh, I just can't recall how long.

Q. Was it that day? A. No, ma'am.

Q. Was it the next day? A. No, ma'am.

Q. And you had no indication that the police thought there had been any violation of law or that there had been or was no attempt to arrest anyone present at that time? A. No, ma'am.

Q. And how many police officers were present?

A. Well, a good 20, I presume. That is not the right figure, but about 20.

Q. Mr. Kaholokula, who is manager of the Maui Agriculture Company? A. At that time?

Q. Yes. A. Harry A. Baldwin.

Q. Harry A. Baldwin. What office did Asa Baldwin hold?

A. Assistant manager. Whether he already took office before this strike, I wouldn't know, but anyway Harry A. Baldwin was manager of that company. That I know of.

Q. At the beginning of the strike?

A. I can't say whether he was during the strike.

Q. And was Asa Baldwin, to the best of your recollection, the assistant manager?

A. Yes, ma'am.

Q. What office with Maui County did Asa Baldwin—

A. Pardon me. He was the manager. That's right; Asa Baldwin was manager of the company.

(Testimony of Joseph K. Koholokula.)

Q. He had taken over from the other Mr. Baldwin?
A. Yes.

Q. What official office did Mr. Asa Baldwin hold with the county in addition to his connection with the company?

A. If I am not mistaken he was also police commissioner on that island.

Q. Was he chairman of the police commission, or just a member?

A. I think a member of the police commission.

Q. Was there any attempt made to unseat you in the Legislature as a result of this?

A. Well, not that I know of. There was a little talk that is only hearsay, but whether they wanted to do that, I don't know.

Q. Were you running for election during the sugar strike?

Judge Biggs: Don't you think you have pursued that to the point past relevancy, Mrs. Bouslog?

Mrs. Bouslog: We are trying to show, your Honor, the individual damage too, but I will turn the witness over [87] to Mr. Crockett at this time.

Judge Biggs: How would that prove individual damage? The witness is a member of the Legislature. Obviously the talk had no effect on his election. How then would it prove damage?

Mrs. Bouslog: Well, it shows that he was purposefully and wilfully discriminated against and denied equal protection of the laws for a purpose which wasn't——

(Testimony of Joseph K. Koholokula.)

Judge Biggs: Unsuccessfully, however.

Mrs. Bouslog: Unsuccessfully.

Judge Biggs: I think that is too far afield.

Mrs. Bouslog: Your witness, Mr. Crockett.

Judge Biggs: Cross-examine.

Cross-Examination

By Mr. Crockett: If the Court please, could we take our noon recess now?

Judge Biggs: Suppose we clear up Mr. Young before we conclude. He is back in the courtroom now. Your examination will be proceeded with this afternoon after the noon recess.

Mr. Crockett: Might I call the Court's attention, before proceeding, that counsel referred to the indictment of Jose Pias, a man who is dead. The copy of the indictment shows that that name was stricken from the indictment.

Judge Biggs: Yes, the Court stated the indictment [88] would speak for itself.

Mr. Crockett: And he wasn't indicted.

Judge Biggs: The indictment will speak for itself.

Mr. Crockett: Yes, that is correct.

Judge Biggs: Now let's have Mr. Young.

CHARLES C. YOUNG,

a witness called by and in behalf of the Plaintiffs, resumed the stand, having been previously sworn, was examined further as follows:

Direct Examination (Cont.)

By Mrs. Bouslog:

Q. Mr. Young, have you compared the persons on the membership list of the Senior Chamber of Commerce with the 1947 grand jury?

A. I have.

Q. Can you state what members of the 1947 grand jury were also members of the Senior Chamber of Commerce of Maui?

A. Well, there were 10 out of 50 members of the grand jury who were members of the Maui Chamber of Commerce as of June 30, 1947: Ray M. Allen, Allen H. Ezell——

Q. (By Judge Biggs): What did Allen do?

A. Sir?

Q. What is his business?

A. He is manager of the Wiluku Sugar Company. Mr. Allen H. Ezell, Joseph H. Trask, H. S. Peterson, Frank W. Broadbent, [89] E. Stanley Elmore, Albert D. Waterhouse, Andrew Moody, Edward H. Baldwin, and Charles E. Morris.

Q. And those were all members of the Chamber of Commerce on June 30, 1947?

A. Yes, ma'am.

Q. Now, Mr. Young, do you know of your own knowledge the difference between the Junior Chamber of Commerce and the Senior Chamber of Com-

(Testimony of Charles C. Young.)

merce on Maui, what are the differences in qualification for membership?

Mr. Crockett: We object, if the Court please. It is incompetent, irrelevant and immaterial.

Judge Biggs: Yes, is that relevant? Is it necessary to explain the distinction between the chambers?

Mrs. Bouslog: The only reason I want to know, your Honor, is if possible to avoid calling another witness. I want to know if Mr. Young knows of his own knowledge the members of the Junior Chamber of Commerce so that he could testify as to——

Judge Biggs: Ask him that question.

Q. (By Mrs. Bouslog): While you were examining this list of grand jurors, did you run across additional names that are, of your own knowledge, members of the Junior Chamber of Commerce?

Mr. Crockett: We object to the question, your Honor, on the grounds that the proof is not properly offered and [90] not the question the Court suggested to counsel.

Judge Biggs: You misunderstood the Court's statement, Mr. Crockett.

Mrs. Bouslog: We offer to show, your Honor

Judge Biggs: You are proceeding rather irregularly as to proof, Mrs. Bouslog. The proper way to prove membership would be to bring in the secretary of the Junior Chamber. Do you make that objection, Mr. Crockett?

(Testimony of Charles C. Young.)

Mr. Crockett: Yes, your Honor, and also it is not relevant as to who the members are.

Judge Biggs: You do object on the ground the offer of proof is not proper?

Mr. Crockett: Yes.

Judge Biggs: We will have to sustain the objection.

Q. (By Mrs. Bouslog): When the vote was taken, Mr. Young, on the resolution which you reported a while ago, were there any dissenting hands indicating opposition to the resolution on the labor situation? A. I can't recall.

Q. The article in the newspaper states unanimously. Is that to the best of your recollection?

A. To the best of my recollection, yes.

Q. Do you know from examining the list of the 1947 grand jury whether any of the members that you named were present at that meeting? [91]

A. Yes, there were. I read some of them in the minutes there. Yes, Mr. Elmore was present. Mr. Moody was president of the Chamber at that time. Those are two that I know were there. Mr. Ezell, I don't remember.

Q. Do you recall whether there were any other members on that list of 10 you read off who were present at that meeting? Would you look down the list of 10 and see if you can recall?

A. That is what I am doing. Those are the only two that I can recall.

Mrs. Bouslog: Your Honor, I will ask the Court

(Testimony of Charles C. Young.)

for permission to get the copy of the resolution from the Secretary without the necessity of producing the secretary since the president has been produced, and also to produce the telegram which has been referred to in the minutes with a certificate of the secretary, if the defendants have no objection as to the form, and merely legal objections.

Judge Biggs: You reserve your objection as to pertinency. Do you have any objection as to form?

Mr. Crockett: We have none.

Mrs. Bouslog: Your witness, Mr. Crockett.

Judge Biggs: Suppose we go ahead for a few minutes. There are a good many witnesses, aren't there? Would you prefer to take your recess now?

Mr. Crockett: We have no questions from Mr. Young.

Judge Biggs: Very well then, that concludes the testimony. Thank you, Mr. Young.

(The witness was excused.)

Judge Biggs: The Court thinks that probably a little bit longer recess than usual might be desirable from the viewpoint of counsel. The Court will stand in recess until 2:00 p.m.

(At 12:25 p.m. a recess was taken until 2:00 p.m.)

2:00 p.m. Session

Judge Biggs: Before we proceed, there is a matter which probably should be cleared up. The Clerk informs me that no Exhibit 8 has as yet been offered. That, Mrs. Bouslog, was for the resolution which was to be offered.

Mrs. Bouslog: Yes, your Honor, that number was for the resolution. Mr. Crockett has stipulated that he will not object as to the form of this, and the president of the Chamber of Commerce, Mr. Young, who was here, stated that he will get the secretary to furnish a copy of the resolution together with the telegram which was also referred to.

Judge Biggs: Is there a stipulation as to the telegram as well?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: Very well then, that number 8, I have it marked here as reserved. Shall we proceed?

Mrs. Bouslog: Mr. Crockett has stipulated that subject to his objection as to materiality, that I may obtain [93] from the Secretary of the Junior Chamber of Commerce the list of its members who were members of the 1947 Maui grand jury, and that I may submit these lists to the Court, and also a copy of the resolution adopted by that body in relation to the pineapple dispute.

Judge Biggs: The reservation is only as to relevancy?

Mrs. Bouslog: That's right, your Honor.

Judge Biggs: Very well. Two witnesses were reserved for cross-examination. One was Mr. Young and the other was Mr. Sibolboro.

Mrs. Bouslog: Mr. Young has been excused.

Judge Biggs: Yes, he was concluded with. His testimony was concluded.

Mrs. Bouslog: Mr. Sibolboro and Mr. Kaholo-kula, who was on the stand. I would like to recall,

with Mr. Crockett's permission, Mr. Kaholokula for two questions only.

Judge Biggs: Very well.

JOSEPH K. KAHOLOKULA,

a witness by and in behalf of the Plaintiffs, resumed the stand; having been previously sworn, was examined further as follows:

Direct Examination (Cont.)

By Mrs. Bouslog:

Q. Mr. Kaholokula, what is your race or nationality?

A. Hawaiian and a little Caucasian. [94]

Q. Hawaiian and a little Caucasian?

A. That's right.

Q. Do you know the present?

A. Nothing to talk about. I might as well call myself a pure Hawaiian.

Mrs. Bouslog: For the information of the Court, this document is entitled "Plantation House Rules, Hawaiian Commercial and Sugar Company, Ltd." They are the same for the various plantations on the island of Maui. This copy was furnished to me by the lawyers for the Hawaiian Commercial and Sugar Company.

Judge Biggs: Is it agreed that they are the same for all the plantations on the island of Hawaii?

Mrs. Bouslog: Maui, the island of Maui.

(Testimony of Joseph K. Kaholokula.)

Mr. Crockett: So far as I know at the present time, if the Court please.

Judge Biggs: We will admit it subject to the usual reservation and to the further provision that if you find that they are not so applicable, you may point that out to the Court.

Mrs. Bouslog: For the Court's information, Rule No. 6 provides that the following shall be causes for discharge: Personal conduct which violates standards of normal decency or morality of the community.

Judge Biggs: No objection to its being offered, other than the objection as to relevancy?

Mr. Crockett: That is correct.

Judge Biggs: Let it be admitted subject to the same ruling; Plaintiff's Exhibit No. 10.

(Thereupon, the document referred to was marked Plaintiff's Exhibit No. 10 and was received in evidence.)

PLAINTIFF'S EXHIBIT No. 10

PLANTATION HOUSE RULES

Hawaiian Commercial & Sugar Co., Ltd.

Section 18 of the Agreement between Hawaiian Commercial & Sugar Company, Limited and the I.L.W.U. Local 144, Unit 2, provides in part; "Employees shall be subject to discipline or discharge by the Company for insubordination, pilferage, drunkenness, incompetence, failure to perform the work as required, violation of the terms of this

(Testimony of Joseph K. Kaholokula.)

Agreement or failure to observe safety rules and regulations, and the Company's house rules which shall be conspicuously posted."

In order to comply with this provision of the Agreement, the Hawaiian Commercial & Sugar Company Limited hereby posts rules covering subjects not specifically mentioned in this Section 18 of the Agreement. The following items will be considered violations of Company house rules and be cause for discipline or discharge:

1. Insubordination, including the refusal or failure to perform work as assigned; the use of profane, abusive or obscene language toward fellow employees, including supervisors; and fighting or attempting or threatening bodily injury.

2. Pilferage or theft of Company property.

3. Violation of the terms of the Union Agreement.

4. Willful destruction or defacing of property or equipment of the Company, or negligence or carelessness resulting in damage to the property or equipment of the Company.

5. Failure to report breakage, damage or loss of plantation property and equipment to a supervisor.

6. Personal conduct which violates standards of common decency or morality of the community.

7. Violation of any ordinance or statute involving moral turpitude, and in particular the following:

- (a) Carrying concealed or unlicensed or unregistered firearms.

(Testimony of Joseph K. Kaholokula.)

(b) Introduction, possession or use of habit-forming drugs on the property of the plantation.

8. Smoking in restricted areas where "No Smoking" signs are posted.

9. Offering or receiving money or other valuable considerations in exchange for a job, better working place or any change in working conditions.

The following house rules apply during working hours or at the place of work:

10. Reporting to work in an intoxicated condition, drinking intoxicating liquors during working hours or at the place of work.

11. Failure to perform the work as required either due to incompetence or to carelessness in following instructions.

12. Failure to observe and carry out safety rules and operating regulations as posted by the Company in regard to the individual and to others.

13. Gambling while at work or at the place of work.

14. Willfully and intentionally falsifying reports and records.

15. Repeated tardiness in reporting to work and sleeping while on duty.

16. Soliciting or canvassing in any form during working hours not authorized by management.

17. Unreported or unexcused absence for a period of six consecutive work days. Such unauthorized absence will be considered as a resignation.

The above house rules shall be subject to amendment from time to time.

(Testimony of Joseph K. Kaholokula.)

Mrs. Bouslog: That's all.

Cross-Examination

By Mr. Crockett: If the Court please, I believe it would be helpful to the Court at this time for the defense to offer a group of five pictures which we will identify through Mr. Kaholokula.

Judge Biggs: You have no objection to those being offered out of order?

Mrs. Bouslog: No, your Honor.

Judge Biggs: Very well; Exhibit A, all as one exhibit please.

(Thereupon, the documents referred to were marked Defendant's Exhibit No. A and received in evidence.)

Q. (By Mr. Crockett): Mr. Kaholokula, did you have a chance to examine the pictures which the police had of that incident at Paia? A. Yes.

Q. Would you examine these pictures which I have just offered in evidence and identify them for us; showing you first the [96] picture which is marked No. 1. Would you examine that and tell us what scene that represents?

A. Well, I see here the men doing the picketing; that is, walking, that morning.

Q. That is a picture of the scene?

A. That's right.

Q. On the morning when this incident occurred?

A. October 16th, yes, in front of Paia Store.

Q. I believe on your direct examination you testified it was September 16th.

(Testimony of Joseph K. Kaholokula.)

A. Well, that wasn't the correct date. October, it must have been.

Q. October 16th? A. That is correct.

Judge Biggs: Are you going to refer to these as A-1, A-2, etc?

Mr. Crocket: Yes.

Judge Biggs: They will be so marked.

(The documents referred to were marked Defendant's Exhibits Nos. A-1, 2, 3, 4, 5.)

Q. Now, would you testify a little more in detail, what portion of the premises does this picture indicate or refer to? There is a road shown there. What road is that?

A. Well, this is county road, and part of the plantation premises. [97]

Q. Is that near the mill? A. That's right.

Q. And it is also near the office of the plantation?

A. Well, this picture was taken, I think—yes, it is near to the plantation office.

Q. In other words, the road in question, there is the mill on one side of the road and the plantation office on the other side? A. That's right.

Q. And is that a fairly accurate representation of how the men were picketing that morning?

A. That's right.

Q. From your examining that picture, could you say whether or not that was apparently taken before the incident or after the incident?

(Testimony of Joseph K. Kaholokula.)

A. Yes, sir, I do.

Q. Yes, do you know what that building is?

A. Yes, sir.

Q. What is it?

A. That is the roundhouse where the locomotives are being stored.

Q. I see. Now there seems to be a path here in the foreground, [100] in the lower edge of the picture. Where does that path lead?

A. That is the main road.

Q. That is the main road? A. Yes.

Q. I see. Now what is to the right of that main road behind this tree on the right? What I am trying to find out is the relation to the company's property.

A. The road leads right down past this tree. There is nothing beyond this tree but the government road.

Q. Does that road run across the picture?

A. Yes, your Honor.

Q. Let me point out what I mean here. I am referring to this little open place in the lower part of the picture. What is that? If you walked back here, off the picture——

A. You would go to the main office.

Q. The main office? A. Yes, your Honor.

Judge Biggs: Thank you. Mr. Crockett, will you proceed?

Mr. Crockett: If the Court please, I might say some of the other details of the pictures we will develop by other witnesses later on.

(Testimony of Joseph K. Kaholokula.)

Judge Biggs: Very well.

Q. (By Mr. Crockett): As I understand it, Mr. Kaholokula, the men were picketing by walking up on the side of the road [101] near the mill, were they not? A. Yes, sir.

Q. And the men that you call the scabs, they were on the side of the road on which the office is located? A. That's right.

Q. Did you know the names of any of these persons whom you refer to as scabs? A. Yes, sir.

Q. What were their names?

A. Nelson Souza, William Souza, Louis Souza, Louis Moniz and William Kaholokula.

Q. William Kaholokula; is he any relation to you? A. That's right.

Q. What relation? A. First cousin.

Q. Now you said that a scab was a person who was taking the job of the strikers, is that what you said? A. That's right.

Q. How long have you known these men you just named?

A. Known them ever since childhood.

Q. Where had they been employed previous to the time of the strike?

A. Louis Moniz was employed at H. C. & S. Company and William Kaholokula has been with various concerns, mostly with contractors, and the rest of them, the three others, was brought [102] up right on the plantation and worked at the plantation.

(Testimony of Joseph K. Kaholokula.)

Q. At the time of the strike, wasn't it a fact that those other two you mentioned were employees of the M.A. Company? A. They were.

Q. So that all five of them immediately prior to the strike were employees of the M.A. Company?

A. That's right.

Q. Isn't it a fact that prior to the time of this incident they were members of the union.

A. That's right.

Q. And had withdrawn and desired to return to work; is that not a fact? A. That's right.

Q. Now on the morning this incident occurred at about 6:30 didn't you have a talk with some of those men? A. I did not.

Q. You didn't talk to them in the presence of Mr. Freitas at any time that morning before the incident occurred? A. No, sir.

Q. Were you present when they were talking to some of the strike leaders?

A. I know the family of Gordon did approach Gordon and told him, "I think it is best that you go home." That was all.

Q. You didn't say anything to Kaholokula, or Kaholokula explain why he wanted to go to work?

A. No, sir.

Q. Didn't any of the five men explain why they wanted to return to work? A. No, sir.

Q. That wasn't in your presence?

A. No, not in my presence.

Q. They didn't tell you they didn't get enough

(Testimony of Joseph K. Kaholokula.)

food and couldn't support their families and that was why they wanted to return to work?

A. No, sir.

Q. I understand you had no conversation with them at all?

A. No, sir.

Q. Did you have any conversation with Mr. Freitas before this incident occurred?

A. Yes, I talked to him and talked to the rest of the police officers.

Q. Who was present when you talked with Freitas?

A. Well, I wouldn't know, all the police officers who were there.

Q. How about Kealoha, was he there?

A. I wouldn't know. I just can't say whether he was there.

Q. Was Kawano there talking at the time when Freitas was talking to you?

A. He was in Paia, but I don't recall if he was close by.

Q. Isn't it a fact he was standing around there?

A. I can't say whether he was.

Q. You don't remember at this time?

A. I don't remember.

Q. Can you recall anything that was said between you and Mr. Freitas?

A. The only thing that he and I talked about, he told me, "Well, Joe, I think let's go for breakfast," and that we did.

Q. Was that before the incident?

(Testimony of Joseph K. Kaholokula.)

A. I beg your pardon?

Q. Was that before that incident?

A. After.

Q. Well, I believe you said you had a talk with Freitas before the incident.

A. Well, just talking as a friend together, "Well, how's things"? and everything else. I told him, "Everything is all right."

Q. You don't recall having a talk with them when Kalua was there and Kawano was there and Kawano said there was going to be trouble if those men tried to go through?

A. I don't remember that.

Q. And further said that there was going to be violence?

A. I don't remember.

Q. You don't remember a remark being made, "You fellows better get ready"?

A. No, sir.

Q. You don't remember that?

A. No, sir.

Q. You don't remember any other conversation except just a little friendly talk that morning.

A. That's right.

Q. After the incident happened, you say you and Freitas went up to the restaurant and had a cup of coffee?

A. That's right, and this is what I told Chief Freitas, that I congratulated him for the fine work carried on by him. If it wasn't for him they could have gone a lot further than what took place, but he ordered the scabs out.

Q. And you told him you had men standing by

(Testimony of Joseph K. Kaholokula.)

at Spreckelsville and Puunene to come up if there was a demonstration?

A. I don't remember telling him that.

Q. Do you recall having a meeting later on during that day, kind of a rally, up near the Paia Theater?

A. Yes, we did have a meeting, a rally.

Q. And at that time did you make a speech?

A. I did.

Q. Do you recall making a remark or saying that it was a wonderful showing they made, or something to that effect, that the Maui police couldn't stop—

A. I did not say that.

Q. And that even if they brought the Honolulu police they couldn't get through the lines? [106]

A. I did not say that.

Q. Do you recall a few days after that making a speech at Lahaina? A. I did.

Q. How many days after this incident was that?

A. I wouldn't know just how long after that.

Q. Well, as a matter of fact, it was the following Saturday, wasn't it? A. It could be.

Q. Well, was it or was it not?

A. Well, I can't say. I don't remember the date.

Q. Well, at the speech you made at Lahaina on that Saturday which is a date you don't remember, you referred to the Paia incident, didn't you?

A. I think I spoke a little about the Paia incident.

(Testimony of Joseph K. Kaholokula.)

Q. And you mentioned the fact that the picket line was so strong nobody could go through, or something to that effect, didn't you?

A. Well, having from four to five hundred picketers and only five going to push through, how can you go through there?

Q. You talked about it at Lahaina?

A. I don't recall. Maybe I did.

Q. Well, would you say you didn't?

A. I just can't say.

Judge Biggs: Won't you please answer the questions? [107] Your answers are not responsive. Either you do or you do not remember. If you do not remember, you may say so.

A. I don't recall.

Judge Biggs: If you do remember, we want your testimony.

Q. Do you recall making a statement at Lahaina something to this effect: "At Paia some men tried to go back to work and we stopped them. The police tried to help them but we were stronger. Assistant Chief Freitas and the police were there. We defied the police. If it wasn't for the smartness of Assistant Chief Freitas, there would have been bloodshed."

A. I said that.

Mr. Crockett: That is all.

Judge Biggs: Any further questions?

Mrs. Bouslog: No further questions.

Judge Biggs: Thank you.

(The witness was excused.)

Judge Biggs: Your next witness, please, Mrs. Bouslog.

Mrs. Bouslog: I will call Benjamin Awana.

BENJAMIN AWANA,

called as a witness by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please? [108]

A. Benjamin K. Awana.

Q. What is your nationality?

A. Chinese, Hawaiian, Samoan and Irish.

Q. (By Judge Biggs): Could we have the witness spell his name, please? A. A-w-a-n-a.

Q. (By Mrs. Bouslog): At the beginning of the sugar strike in 1946, were you employed by the Maui Agricultural Company? A. I was.

Q. Were you a member of the union?

A. Yes.

Q. Did you hold any office in the union?

A. I was secretary for my union local 144, unit 1.

Q. Were you, as an officer of the union, were you partly responsible for picketing, or did you hold any other position in connection with the strike activities?

A. Well, I was more or less connected with the administration of the unit than anything else.

(Testimony of Benjamin Awana.)

Q. Did you hold any position on an island-wide or territorial-wide——

A. Yes, I did serve on the strike strategy committee. That was before the strike from August 1st to 30th, I think.

Q. Before the sugar strike what was your job at the Maui Agriculture Company?

A. I was an electric welder. [109]

Q. How long had you worked for them at that time? A. Since September 7, 1945.

Q. Was there a strike vote conducted at Paia to determine whether or not the membership would go on strike? Was there a strike vote conducted before the strike? A. Yes, there was.

Q. Do you know what the result of that vote was? A. At least 90%.

Q. To strike? A. Yes, to strike.

Q. Were you present on the picket line in front of Maui Agriculture Company on September 16, 1947?

A. I wasn't. I don't remember that date.

Q. I beg your pardon, were you present on October 16th? A. Yes, I was.

Q. Will you tell the Court what happened on that occasion from the time you arrived until after the incident occurred?

A. Well, on the morning of the incident I arrived at about five o'clock for the purpose of walking the picket line. Then a little before 6:30 or around 6:30 these five scabs came down to the place where the incident happened and walked on the

(Testimony of Benjamin Awana.)

other side of the road. A few minutes later Mr. Freitas summoned the pickets, called them together in a group, so we stopped picketing and went over to see what is cooking. Well, he read some law to us about a trespass and loitering [110] of some sort, which I have given you a copy marked in red, and just when he got through talking, we were going to get ourselves organized back into a walking picket line, police officer Captain Long of the Paia department and about ten other police officers approached me, and he told me, "Ben, the boys are going to work." Well, I didn't say nothing, and this scab just pushed me and we pushed him back, that is, the scabs and the police. There was no one was knocked down or hurt, and we weren't arrested or ordered to disperse.

Q. About what time was it when this incident happened?

A. I would say right a little before, around ten to, I imagine.

Q. (By Judge Biggs): Around what?

A. Around ten to seven.

Q. (By Mrs. Bouslog): You mean ten minutes before seven o'clock in the morning?

A. Around that.

Q. And about how long did all this take, from the time the police officer came up and read the trespass statute to you?

A. It didn't take—well, three or four minutes, I guess.

(Testimony of Benjamin Awana.)

Q. Was anybody scratched or bruised in any way? A. Not that I know of.

Q. Was any order given by the police to you or to any other person present to disperse or to open up the lines or do anything? [111] A. No.

Q. (By Judge Biggs): Were any blows struck?

A. No.

Mrs. Bouslog: Mr. Crockett, I have here a copy of the Session Laws of Hawaii, 1945.

Mr. Crockett: No objection, if the Court please, except that we haven't checked it as to detail.

Judge Biggs: Very well, you may check it as to detail, and if it appears to be inaccurate, you may inform the Court.

Q. (By Mrs. Bouslog): Mr. Awana, I hand you a document that reads "Session Laws of Hawaii, 1945" and has at the top a note that says, "This is what the cops read to us." Did you give that to me? A. Yes.

Q. Where did you get it from?

A. I obtained it from, well, Captain Henry Long of the Paia Police Department had a whole armful of them and gave it to us I think in the month of, the latter part of September or the early part of October. He came to one of our meetings, uninvited.

Q. You were standing where you could hear the police officers that morning at the time of the incident? A. Yes.

Q. Will you read the part that was read to you by the police into the record here? [112]

(Testimony of Benjamin Awana.)

A. (Reading) "Whoever, without right, enters or remains in or upon the dwelling house, buildings or improved or cultivated lands of another or the land of another about or near any buildings used for dwelling purposes, after having been forbidden to do so by the person who has lawful control of such premises, either directly or by notice posted thereon, and any person who wilfully tears down or defaces any such notice, shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not more than two hundred fifty dollars or by imprisonment of not more than three months, or by both fine and imprisonment."

Q. Does that paper indicate on the top from what section of the Revised Laws that is?

A. It says, "Section 11751, Trespass, penalty."

Q. And is that all that was read to you?

A. Well, that was about all I heard, to the best of my knowledge.

Q. This part down here was also read.

Mrs. Bouslog: Your Honor, I will call the Court's attention to the fact that the second part that was also read is Section 11771 of the Revised Laws of Hawaii. That deals with vagrants, beggars, pickpockets, loitering, dissolute persons, prowlers, common prostitutes, drunkards, disorderly persons; penalty.

Judge Biggs: Mrs. Bouslog, did the witness say that [113] portion was also read?

Mrs. Bouslog: Yes, he has indicated.

(Testimony of Benjamin Awana.)

Q. (By Judge Biggs): The part which your counsel has just read to you, Mr. Awana, was also read to you on the date of this incident?

Mrs. Bouslog: Your Honor misunderstood. That is the title of the statute. The part read was indicated by a red mark.

Judge Biggs: I merely want to get the record straight, Mrs. Bouslog.

Q. (By Mrs. Bouslog): Was this part read?

Judge Biggs: Mark it in some way on the document.

Q. Was the part in red on this document, the part that was read to you by the police officers that morning? A. Yes.

Judge Biggs: Very well, let it be marked in evidence.

Mrs. Bouslog: For the Court's information, here is another part of the statute that deals with rioting and unlawful assembly.

Judge Biggs: Let it be marked Plaintiff's Exhibit Number 11.

(Thereupon, the document referred to was marked Plaintiff's Exhibit No. 11 and was received in evidence.)

PLAINTIFF'S EXHIBIT NO. 11

Session Laws of Hawaii 1945

Section 11751. Trespass, Penalty.

Whoever, without right, enters or remains in or upon the dwelling house, buildings or improved or

(Testimony of Benjamin Awana.)

cultivated lands of another or the land of another about or near any buildings used for dwelling purposes, after having been forbidden to do so by the person who has lawful control of such premises, either directly or by notice posted thereon, and any person who wilfully tears down or defaces any such notice, shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not more than two hundred fifty dollars or by imprisonment of not more than three months, or by both fine and imprisonment;

Provided, however, that entry upon or passing along or over established and well defined roadways, pathways or trails leading to public beaches over government lands, whether or not under lease to private persons, shall not of itself constitute the offense of trespass, and anyone entering upon or passing along or over any such roadway, pathway or trail on his way to or from a public beach shall be liable only for such actual physical damage as he may cause in so doing.

Section 11771. Vagrants; Beggars; Pickpockets, etc.; Loitering; Dissolute Persons; Kahunas; Prowlers; Tramps; Fortune Tellers; Common Prostitutes; Drunkards; Disorderly Persons, etc.; Penalty.

Every person without visible means of living who has the physical ability to work and who does not seek employment nor labor when employment is

(Testimony of Benjamin Awana.)

offered him; or every beggar who solicits alms repeatedly or causes any child so to do, or every person who roams about from place to place without any lawful business; every person who has in his possession without lawful excuse (the proof of which excuse shall be upon such person) any false or skeleton key or any implement of house breaking; or every person who is found without lawful excuse (the proof of which excuse shall be upon such person) in or upon the dwelling house, building, yard, or the land of another about or near any building used for dwelling purposes, or on board any vessel; or every person who wanders about the streets at late or unusual hours of the night, without any visible or lawful business; or every person who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof; or every person who is dangerous or disorderly by reason of his being a rioter, disturber of the peace, going offensively armed, uttering menaces or threatening speeches or otherwise, is a vagrant and shall be punished by a fine of not less than ten dollars nor more than five hundred dollars or by imprisonment for not more than one year, or by both fine and imprisonment.

Admitted.

(Testimony of Benjamin Awana.)

Q. (By Mrs. Bouslog): On October 16, 1946, how many days had [114] the sugar strike been going on? A. Oh, about 45 days, I imagine.

Q. It began on the first day of September?

A. Yes.

Q. How many people were employed by the Maui Agriculture Company at Paia, or were employed at that time? A. About 1,800.

Judge Biggs: Just a moment. Please read the question and answer.

(The question and answer were read by the reporter.)

Q. How many people live in Paia?

A. About 3,000.

Q. Do the people who live in Paia represent approximately the employees of the Maui Agriculture Company and their families? A. Yes.

Q. Is Paia what you might call a company town?

A. Yes.

Q. Is the road that runs out in front of the Maui Agriculture Company mill a public or private road? A. It is a public road?

Q. How wide is that public road?

A. 45 feet.

Q. At the time when the picket line was picketing on the morning of October 16, was it picketing on the public road? A. On the public road.

Q. Did the picket line when it was moving, constitute an obstruction to traffic? A. No.

Q. Now, you say this was the 46th day of the

(Testimony of Benjamin Awana.)

strike. Had there been picketing at the Maui Agriculture Company from the first day of September until October 16th? A. Yes.

Q. Had the police at any time ever indicated that there was anything wrong with that picketing or objected to the presence of the pickets there?

A. Not to my knowledge.

Q. How many pickets, approximately, had been picketing this plant since the first day of September?

A. Oh, some days we have about 500, and some days about 1,000; some days 2,000 and so on.

Q. But you had had no difficulty with the police officers up to that time? A. No.

Q. Had there been any arrest for any picketing activities on the picket line at Paia in that 45 day period? A. I think one.

Q. Do you know, do you recall who that was?

A. A fellow by the name of George Ferrera.

Q. Do you know what happened? What was he charged with?

A. Assault and battery, I think. [116]

Q. And did he serve on the picket line after that incident happened?

A. No, after that incident he was thrown in the soup kitchen.

Q. You mean by that he was assigned to other strike activity? A. Making chow.

Q. Instead of on the picket line?

A. Yes, instead of the picket line.

(Testimony of Benjamin Awana.)

Q. When were you arrested after this incident happened on the 16th of October? When were you arrested?

A. I was arrested about nine o'clock in the morning; I think it was on a Saturday. I think it was the 17th.

Q. In other words, a whole day intervened?

A. Yes.

Q. From that day, the next day and the next day after that. How much bail were you required to put up?

A. \$1,000.

Judge Biggs: I don't think it is quite clear as to the length of time between the witness' arrest and the disturbance. Will you clear that up, please?

Mrs. Bouslog: Yes, your Honor.

Q. What was the time that the incident was over on October the 16th? What time was the incident over?

A. Oh, just about two minutes after.

Q. Well, what time in the morning was that?

A. A little before seven, I think. [117]

Q. What happened the rest of that day? Did the picketing activities continue?

A. They continued to picket.

Q. What happened the next day?

A. We still continued to picket.

Q. And when were you arrested? Were you arrested the next day? I think the record will—

Judge Biggs: That is the third day?

Mrs. Bouslog: Yes, the third day.

(Testimony of Benjamin Awana.)

Judge Biggs: Well, the record can be corrected. I had forgotten you had stipulated.

Mrs. Bouslog: I don't believe we have any record but I believe Mr. Crockett will stipulate it was on the 17th that the 79 people were arrested. Can you stipulate to that, Mr Crockett?

Judge Biggs: That is the day after the incident.

Mrs. Bouslog: I know. I am sorry. I am really confused. I was thinking of another incident to which we will refer in a few minutes.

Judge Metzger: Haven't you got the record of the arrest there?

Mrs. Bouslog: I have, your Honor, only the original indictment, but Mr. Crockett has the information here.

Judge Biggs: Can you enlighten the Court?

Mr. Crockett: I believe the complaint was sworn to [118] on the 19th before the District Magistrate, and the arrests were made a day or two after that. Some of them were picked up at one time.

Judge Biggs: That is fairly close. Will you accept that?

Mrs. Bouslog: Yes.

Judge Biggs: Very well.

Q. (By Mrs. Bouslog): Mr. Awana, do you know of your own knowledge whether or not—after you were arrested and you were taken down to the police station, what happened then?

A. Oh, we were held for questioning.

Q. How long were you held?

(Testimony of Benjamin Awana.)

A. Well, about five or six hours.

Q. How many people was that?

A. Roughly about 50.

Q. And then you were charged with unlawful assembly and riot by the police, is that correct?

A. Yes.

Q. Did you ever have a preliminary hearing on that, or did you waive the preliminary hearing?

A. We waived it, I think.

Q. And were you subsequently indicted by the grand jury of Maui County? A. Yes.

Mrs. Bouslog: I wonder if I may have the exhibit. [119] Your Honor, I have a copy to substitute for that one. This is the one I asked for permission to substitute. This is the substituted copy.

Judge Biggs: Would you mark the new copy, Mr. Clerk? Plaintiff's Exhibit 9.

(Thereupon the document was marked Plaintiff's Exhibit No. 9.)

[Exhibit 9 set out on pages 1240 to 1247.]

Q. (By Mrs. Bouslog): Is this the original indictment returned against you by the grand jury of Maui County? A. Yes.

Q. Will you look at those names on there, and will you say whether you know of your own knowledge that any of those names of persons were not present in front of the Maui Agriculture Company on that morning? A. Yes.

(Testimony of Benjamin Awana.)

Q. Yes, will you indicate which ones you know were not present?

A. Tomita was sick in bed. Hitoshi Sera was our chief cook in our soup kitchen. Johnny Nishimura was sick in bed. Frank Matsui was working that day. He is a utility worker, power plant operator turbine operator.

Q. You mean that during the course of the strike with permission, certain of the union members were permitted to work?

A. Yes, we furnished power and water.

Q. For community services? A. Yes. [120]

Q. Did any other employees of the company work during the strike with the sanction of the union?

A. The store departments, the store and the power and the one locomotive. We had to keep going to shift the food around.

Q. In other words, the union furnished people to keep the community services running?

A. Yes, and fuel was also furnished.

Judge Biggs: What was also furnished?

Mrs. Bouslog: Fuel.

The Witness: Fuel.

Judge Biggs: Fuel, thank you. Are you offering this indictment?

Mrs. Bouslog: It is already in evidence.

Judge Biggs: Yes, it is already in.

Mrs. Bouslog: Exhibit 9. No further questions.

Judge Biggs: I think we had better take a recess

(Testimony of Benjamin Awana.)

before the cross-examination begins. The Court will stand in recess for about five minutes.

(Recess.) [121]

Q. (By Mr. Crockett): Mr. Awana, on the date that this incident occurred, what was your official position with the pickets on that occasion?

A. Just another picket.

Q. Weren't you kind of in charge of the picketing?

A. No, sir.

Q. Some of your pickets had arm bands on, didn't they?

A. They were in charge of the line.

Q. What did you call those men?

A. Oh, picket captains.

Q. In other words, one group of men were marching in the line and then the picket captains walked alongside, to keep them in line and to keep them moving?

A. To keep them moving.

Q. Weren't you in charge of the picket captains?

A. No, sir.

Q. Who was in charge of the picket captains?

A. Well, we had the—a chief of police.

Q. Who was that?

A. A man by the name of Louie Roman.

Q. There was also a man by the name of Levi Kealoha there, wasn't he?

A. Yes.

Q. And one by the name of Kahawanui, I believe?

A. How does the name go? [122]

Q. Benjamin Kahawanui.

A. Do you mean Levi's friend?

(Testimony of Benjamin Awana.)

Q. I really don't know whether he was or not.

A. I know Levi Kealoha had a friend and his name was Ben.

Q. Was Levi an employee of the plantation?

A. I don't think so.

Q. And this friend you refer to as Ben, was he an employee of the plantation?

A. I don't think so.

Q. Was there also a man by the name of Ricardo Baldoza? A. Yes.

Q. Was he an employee of the plantation?

A. No.

Q. About how many men would you say were in line when you got there; not when you got there, but about 6:30 a.m.?

A. I imagine around 200.

Q. Were those men all from Paia or were there some from Puunene and Kahului?

A. To my knowledge, all from Paia.

Q. What were they doing between 6:30 and 7?

A. Picketing.

Q. And by picketing, just specifically how were they carrying it on?

A. Oh, they were walking around, singing scab song, chewing the fat. [123]

Q. On which side of the road were they walking?

A. Going towards Makawao, which would be on the right-hand side of the road.

Q. That would be the side where the mill is?

(Testimony of Benjamin Awana.)

A. Yes.

Q. Was this a picket line or were they back and forth indiscriminately?

A. It was more of a circle; they were more in a circle like.

Q. That is, walking in practically a continuous circle? A. Yes.

Q. Where this circle turned around, on the Makawao side, to where the men turned and reversed their direction on the lower Paia side, about how much of a distance was that?

A. Oh, I would say about 150 feet.

Q. When they began was it more or less in single file or double file or three abreast, or how was that? A. Single.

Q. Single file. That is, at that time, about 6:30, isn't it? A. Yes.

Q. Before this incident? A. Yes.

Q. Were you present or did you see these boys whom you referred to as "scabs" talking to Freitas?

A. I saw the boys talking to the police officers; whether Freitas or somebody else, I don't know, I couldn't say. [124]

Q. Did you see Freitas also talking with Levi and his friend Ben?

A. I can't recall that.

Q. Which one of the officers was it that tried to take the men through the line?

A. Captain Long.

Mrs. Bouslog: I think that answer should be

(Testimony of Benjamin Awana.)

stricken because it calls for—I will withdraw the objection.

Judge Biggs: I think it is a permissible question, within the scope of the cross-examination.

Was the question answered?

(The answer was read by the reporter.)

Judge Biggs: Thank you.

Q. (By Mr. Crockett): I believe you testified that the incident happened about 7 o'clock, when the whistle blew, is that correct?

A. A little before 7.

Q. And just immediately before that the five men were over on the side of the road?

A. Yes. Sitting right on the intersection, on the crossing, where the road enters to the warehouse of the store.

Q. At that time was the line still moving just in single file, one or two abreast, or had it ganged up in any way?

A. Our line was still moving.

Q. Showing you the picture which has been offered in evidence as Defendants' Exhibit 2-A; at what time would you say [125] that that picture was taken? What does that picture represent? At about what time would you say it was taken?

A. Right after Mr. Freitas—a couple of minutes after Mr. Freitas read the law to us, I think.

Q. Does that picture show the line moving or does that show the line stopped?

A. On the Makawao side it shows the men are

(Testimony of Benjamin Awana.)

still in formation. I think that this part of the picture, we were going to get back into formation and go round and round.

Q. And does that picture also show the persons you refer to as "scabs" approaching?

A. Yes; five of them.

Q. (By Judge Metzger): Where?

A. There (indicating).

Q. (By Mr. Crockett): Did those men say anything to you or tell you what they wanted to do?

A. No, sir.

Q. Did they ask you to let them go through the line?

A. No, sir.

Q. Did Captain Long say anything to you?

A. Yes.

Q. What did Captain Long say?

A. He said, "Ben, the boys want to go to work."

Q. What did you say?

A. Before I had a chance to reply, they—before I had a [126] chance—That is, I wanted to tell them to respect our picket line, but I didn't have that chance, and this No. 1 "scab" in the front just pushed me, that is all, and we pushed back.

Q. Did you say anything to them before this pushing occurred?

A. I don't remember saying anything to them; I didn't have the chance to say anything.

Q. Do you recall telling "scab" Souza, as you call him, or do you recall "scab" Souza saying to you that he wanted to go through?

A. No.

(Testimony of Benjamin Awana.)

Q. And isn't it a fact that you made the answer "Try and do it"? A. No, sir.

Q. How were you standing at the time these men tried to pass by you?

A. How was I standing?

Q. Yes. Would you mind showing the Court?

A. Just as the picture shows. Whoever took the picture.

Q. Will you indicate to the Court?

(Witness indicates.)

With your arms down? A. Yes, sir.

Q. Isn't it a fact you had your arms outstretched?

A. But I had my arms outstretched because of the push. [127]

Q. Who was standing alongside of you?

A. I can't remember.

Q. Do you remember a man by the name of Shimano? A. I know who he is.

Q. Isn't it a fact he was standing alongside of you? A. I don't know.

Q. Do you remember a man by the name of Ito? A. I know who he is.

Q. Isn't it a fact he was standing on the other side of you? A. Not that I know of.

Q. And when these men approached, isn't it a fact that all of you got together in such a way that they couldn't pass you? A. No, sir.

Q. Did you make any move to allow them to pass? A. I was in the picket line.

(Testimony of Benjamin Awana.)

Q. How close were those men standing alongside of you? A. Oh.

Q. Practically shoulder to shoulder?

A. Not quite.

Q. About how much space between them?

A. I can't say; I wasn't looking behind.

Q. Was there enough space between you and the man next to you to allow a person to pass by you without coming in contact with you?

A. I can't say.

Q. Why can't you say? [128]

A. Because I wasn't looking behind.

Q. I am talking about the people alongside of you, not the people behind you.

A. There was nobody alongside of me.

Q. You were in front, by yourself?

A. Well, I was a little in front of them.

Q. I see. Now, do you know whether any of those five boys tried to go to work on any previous occasion?

A. Oh, I just heard about it.

Q. When did they try to go to work?

A. I don't remember.

Q. Wasn't it the morning before that?

A. Not that I know of.

Q. You were present at all times up there, weren't you, Mr. Awana?

A. Off and on. Sometimes I got to do my duty and change the boys.

Q. But you were in Paia district all that time?

(Testimony of Benjamin Awana.)

A. My share of the time; a lot of times I was in negotiations.

Q. But you don't know whether or not any of the men tried to go to work on the previous morning?

A. No.

Q. On the morning after the 16th was there another picket line formed in the same locality?

Mrs. Bouslog: I object as not within the proper scope [129] of cross-examination. I believe this plaintiff's testimony stopped at the time of the incident.

Judge Biggs: To what is this question directed?

Mr. Crockett: It is directed to the proposition which has been raised by the plaintiffs that these people were there to picket, and we wish to show that they continued picketing, not only on this occasion but on more than one occasion thereafter.

Judge Biggs: Objection overruled. Read the question.

(The question was read by the reporter.)

Judge Biggs: Answer.

A. I am not sure.

Q. (By Mr. Crockett): Isn't it a fact, Mr. Awana, that you came and had a talk with me about it a few days after, and told me there was a picket line up there on that morning, and you called it a parade?

A. Wasn't it you called me to see you?

Q. It was in my office. We were talking it over.

(Testimony of Benjamin Awana.)

A. I was called to see Mr. Lane, the chief of police on Maui.

Q. What I am getting at is: Wasn't there a picket line or parade on the morning after the 16th?

A. I can't say.

Q. You didn't tell me that?

A. Maybe I told you there was a picket line, but we had taken different posts. [130]

Q. How about from the 16th right down to the termination of the strike; did you continue to maintain your picket line up at Paia?

A. After the order was issued we were supposed to post three pickets on each post, and that is what we did.

Q. The order you refer to was what, the injunction?

A. Yes.

Q. You continued to picket under the terms of the injunction until the end of the strike?

A. Yes.

Q. What was this incident you said for which Ferreira was arrested; how did that occur?

A. To my knowledge, the "scab" was walking down the road and wanted to work. There was a little harsh words and maybe—I didn't see this now at the time.

Judge Biggs: Let the witness testify from his own knowledge, please. There are exceptions to the hearsay rule, but can't you prove this incident, if it is desirable to prove it, it is apparent to me that it is entirely what someone has told him. Do you want that?

(Testimony of Benjamin Awana.)

Mr. Crockett: No, if the Court please. It was brought in evidence——

Judge Biggs: I know. It is a proper subject of cross-examination, Mr. Crockett, the Court will agree, but at the same time we want evidence——

Mr. Crockett (Interrupting): May I ask just this question?

Q. Was that in connection with picketing or was that just an incident that occurred during the strike?

A. I believe it was in picketing.

Q. Were there any other arrests made of any persons in connection with the picketing?

A. Not that I can recall.

Mr. Crockett: That is all, if the Court please.

Judge Biggs: Anything more on rebuttal? Anything on rebuttal?

Mrs. Bouslog: No, your Honor. That is all.

Judge Biggs: That is all. Thank you.

(The witness was excused.)

Judge Biggs: Are you proposing to clear up the cross-examination of Mr. Sibolboro?

Mr. Crockett: We are ready to take that up at the present time.

Judge Biggs: Suppose we continue with that.

Mrs. Bouslog: That is all right. I have finished with my witnesses on the Kaumalapau incident.

Judge Biggs: Suppose we clear up the cross-examination. Is he there, Mrs. Bouslog? Mr. Sibolboro?

Mrs. Bouslog: I am very sorry, your Honor.

Judge Biggs: Of course, he didn't understand, but will you undertake to get him back again? [132]

Mrs. Bouslog: I will attempt to get him back; I will see if he is at the union's office.

Mr. Symonds: Yes.

Judge Biggs: I suppose Mr. Symonds understands that. We will go ahead with your next witness.

Mrs. Bouslog: Your Honors, I have finished with my witnesses in relation to the incident that occurred in the Kaumalapau indictment of the 1947 grand jury. There has been much reference to the question of what happened after the picketing, what happened afterwards, and I would like at this time to offer a copy of the transcript of the record in No. 11568 before the United States Circuit Court of Appeals for the Ninth Circuit, *ILWU v. Cable A. Wirtz*, where a writ of prohibition was applied for to the Supreme Court of the Territory on the grounds that Judge Wirtz had no jurisdiction to issue the order that was issued. And the connection in which I want to offer this transcript is that when the ex parte restraining order against picketing was asked for, the court limited picketing on the part of the employees to three at every entrance, because he said he was mindful of the unlawful assembly and riot statute.

Judge Biggs: Is there objection to the offer?

Miss Lewis: Yes. We object as incompetent, irrelevant, and immaterial, if the Court please.

We are going much too far afield. If we are going into that injunction hearing, why [133] shouldn't we go into the injunctions that Judge Moore issued and that Judge Rice issued? They have all been reviewed by Judge McLaughlin. Those records are in court. Perhaps we should incorporate all those records in here. I think we are going much too far afield.

Judge Biggs: We don't want the necessity of employing special means of transportation for taking these transcripts to the mainland.

Mrs. Bouslog: I think Miss Lewis misunderstood the purpose. It is the plaintiffs' contention that the unlawful assembly statute hangs like a threat over the whole organization of the union, and that this is another illustration of the way in which the statute is used even for justification for limiting peaceful picketing to three.

Judge Biggs: I am not sure of the necessity for putting those in evidence. It is a public document, isn't it?

Mrs. Bouslog: Yes; it is a part of the record. It is attached to Judge Wirtz's return to the order to show cause before the Supreme Court of the Territory. Plaintiffs offer his decision in the equity file in the Second Circuit Court.

Judge Biggs: You offer them simply to show——

Mrs. Bouslog: I offer his decision simply to show that the unlawful assembly statute was used to justify the limiting of picketing in an agricultural strike, involving thousands of people, to

three, simply because the court felt [134] that anything over three was unlawful assembly or riot or might lead to such.

Judge Biggs: You have already shown that the injunction limited the assembly to three.

Mrs. Bouslog: The judge made the statement——

Judge Biggs: Suppose he was wong. Are we bound by his state of mind?

Mrs. Bouslog: No, your Honor. But as long as it is used as justification for peaceful picketing, it is another way in which the citizens——

Judge Biggs: Isn't that a matter for argument, Mrs. Bouslog?

Mrs. Bouslog: All right.

Judge Biggs: I think it is a matter for argument.

Mrs. Bouslog: All right, your Honor.

Judge Biggs: Will you call your next witness?

Mrs. Bouslog: My next witness, the next, your Honors, we will turn to Case No. 828.

Judge Biggs: Yes.

Mrs. Bouslog: The Barbosa and Makekau incidents. I will first call Pedro De la Cruz.

PEDRO DE LA CRUZ

was called as a witness by and on behalf of the plaintiffs, and being first sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please? [135]

A. Pedro De la Cruz.

Q. Where do you live?

Judge Biggs: Do you spell it D-e-l-a C-r-u-z?

The Witness: De la Cruz.

Judge Biggs: Thank you.

Q. (By Mrs. Bouslog): Where do you live?

A. Lanai City, Lanai.

Q. How long have you lived in Lanai?

A. Up to this time about 14 years.

Q. By whom were you employed on Lanai?

A. Hawaiian Pineapple Company.

Q. Are you now employed by Hawaiian Pineapple Company?

A. No; I was discharged last year.

Q. What time last year were you discharged?

A. I think it is on the 13th of March, 1947.

Q. Are you a member of the union?

A. Yes. A full-time officer now.

Q. What office do you hold with the union?

A. I am president of the unit, Local 15, and the business agent of the unit and the vice-president of the local.

Q. Were you president of the union at the time

(Testimony of Pedro De la Cruz.)

you were discharged by the Hawaiian Pineapple Company? A. Yes.

Q. What was the reason for your discharge?

A. They claimed that my work was unsatisfactory. [136]

Q. What job did you have with the company at the time you were discharged?

A. I was section foreman.

Q. What was your salary or your wage?

A. I was earning \$400 a month.

Q. Had there ever been any complaints against your work up to that time?

A. No; not that I know of.

Q. Did this charge—Did this discharge take place during the current pineapple wage dispute which culminated in the strike of July 10?

A. Yes.

Q. Did you hold any other office in the community of Lanai besides being the union president? At that time?

A. I was and am still president of the Filipino Community in that place, and I was once president of the Community Association that is sponsored by the company. During the war I was the commander of all the organized forces, that is volunteers, which was also a part of the Armed Forces of the United States of America.

Q. Now, you were president of the union at the time of the strike, is that correct, on the Island of Lanai? A. Yes.

(Testimony of Pedro De la Cruz.)

Q. Were there many of the union members arrested during the strike by the police officers on Lanai? [137]

A. Yes; I think close to 60.

Q. Did you have occasion to keep track of the people who were arrested? A. Yes.

Q. Did you put up the bail or take care of the matter of bail for them when they were arrested?

A. I bailed them out. I bailed out all those that were arrested except two.

Q. Now, calling your attention, Mr. De la Cruz, to the time when Abraham Makekau and four others were arrested and charged with unlawful assembly; did you bail those people out?

A. Yes. After some effort to raise the money I bailed them out.

Q. How much was their bail?

A. It was \$1,000 apiece.

Q. \$5,000? A. \$1,000.

Judge Biggs: \$1,000 apiece.

A. \$1,000 apiece.

Q. (By Mrs. Bouslog): How much time did you have to raise that money?

Judge Biggs: I don't understand what you mean by that question. What do you mean, Mrs. Bouslog?

Mrs. Bouslog: The Island of Lanai has very scant facilities for keeping people in detention and all people who [138] are arrested there are immediately enplaned for the Island of Maui.

(Testimony of Pedro De la Cruz.)

Judge Biggs: I see the point. Very well. The question has not been answered.

How much time did you have to raise the bail?

A. Well, I didn't go around and ask for money because I didn't know when or if I could bail them out or not, because the chief of police, when I heard that those people were arrested I saw the chief of police and he told me I cannot talk with them because they were under investigation. So the next morning I visited the chief of police again, and he told me that at six o'clock in the afternoon, if I cannot produce their bail, they will be taken to Maui, and that I had less than an hour to raise the money. I went back to the union office and asked for the union members to put up that sum of money, and before I raised that one of the union members came up with \$3,000, so I went up and bailed them out. I went to the police station and bailed them out.

Q. Was that in connection with the Barbosa group or with the Makekau group of people?

A. The Makekau group.

Q. Did you bail out the eleven people who were arrested at the same time that Diego Barbosa was arrested?

A. Yes.

Q. How much bail? Approximately how much bail was charged [139] in that case, do you recall?

A. Around \$10,000 to \$11,000.

Q. (By Judge Biggs): How much is that per individual?

(Testimony of Pedro De la Cruz.)

A. Some were \$1,000 apiece. I recall two of them was \$500 apiece, I think.

Q. (By Mrs. Bouslog): Mr. De la Cruz, perhaps if you will tell the Court how much money you were forced to raise for people on the Island of Lanai during the five-day pineapple dispute it will give the Court the picture.

A. I am not sure of that, but I was holding a \$7,000 check with me at that time, but when I went to the bank, the bank manager told me that I couldn't cash that check because our local account was not sent to the branch yet, so I could not cash the \$7,000 check, and then I had to ask the boys to borrow it from the merchants in the city, from the business men. So we produced between \$7,000 and \$10,000, I think, and then I bailed out these men.

Q. Why did you say the bank wouldn't cash the check?

A. The bank manager told me that our local's account was not in that branch yet. I would like to explain that our local's money or account is in Honolulu, our local office in Honolulu, so maybe that mean when they sent that \$7,000 check the Bank in Honolulu didn't notify the bank in Lanai.

Judge Biggs: It is pretty remote. I think it is very remote. Let it stand, but do not pursue the question further.

Q. (By Mrs. Bouslog): How many people live in Lanai City? [140]

(Testimony of Pedro De la Cruz.)

A. I wasn't interested in politics because I couldn't participate.

Q. I say, How many people live in Lanai City?

A. Oh. When I was there in 1936 I used to hear from the "Big Shots" that they got about 3800 people. That was in 1936.

Q. Those 3800 people, do most of those people work for the Hawaiian Pineapple Company or their families?

A. Most of them are working and most of them that were not working were dependents of the workmen.

Q. In your opinion did the large number of arrests on the Island of Lanai during the pineapple strike have any effect on the strike?

Mr. Crockett: To which we object, if the Court please, as calling for a conclusion. I don't think he is competent to give his conclusion.

Judge Biggs: Overruled. I think he may testify as to his opinion on that matter. Objection overruled. Answer the question.

The Witness: I beg your pardon.

Q. (By Mrs. Bouslog): In your opinion did the large number of arrests for unlawful assembly on the Island of Lanai have any effect on the pineapple strike?

Judge Biggs: Do you think this witness can testify competently to the arrests for unlawful assembly, as distinguished from any other arrests?

Q. (By Mrs. Bouslog): All right. Just the ar-

(Testimony of Pedro De la Cruz.)

rests then. [141] Did the arrests during the strike have any effect?

A. Yes. Especially when I told my membership that the officers told me that those people were arrested on riot and unlawful assembly, with a penalty of 20 years. Of course my membership was very much scared.

Q. Because of the 20-year penalty they were frightened?

Judge Biggs: Just a minute, please. Proceed. The witness has answered the question.

Q. (By Mrs. Bouslog): Now, did it have any effect? A. Yes.

Q. Did the loss of the pineapple strike have any effect on the membership on Lanai?

Mr. Crockett: To which we object, if the Court please. How could he testify as to that? The witness might say it did or didn't. It is purely speculative and calling for a conclusion. I submit it is not within his power to form an intelligent opinion upon that subject. It is too remote.

Judge Biggs: He has testified that he has had close connection with the union. He has been an officer thereof. And I think he may testify, state his opinion, for whatever it is worth, subject to a motion to strike. Same ruling. The objection is overruled.

The Witness: I beg your pardon.

Mrs. Bouslog: I will repeat the question.

Q. (By Mrs. Bouslog): Did the loss of the

(Testimony of Pedro De la Cruz.)

pineapple strike have any effect on the number of members in Lanai? [142]

A. No, I don't think so.

Q. How many members were there at the beginning of the strike?

Judge Biggs: The witness has answered the question.

Mrs. Bouslog: Yes.

Judge Biggs: With a "No." He says, "No effect."

Mrs. Bouslog: I am asking how many members there were before, at the beginning.

Judge Biggs: I think you are taking it too far. I suppose you propose to find the difference in number before and after.

Mrs. Bouslog: That is correct.

Judge Biggs: The witness has stated there was no effect in his opinion.

Mrs. Bouslog: I think the witness didn't understand the question.

Judge Biggs: You may repeat the question to him.

Q. (By Mrs. Bouslog): Mr. De la Cruz, by the fact that no wage increases were gotten for——

Judge Biggs: There is your question as testified to before. Did or didn't the loss of the strike have an effect on the membership of the union? .

Q. (By Mrs. Bouslog): Did or didn't the loss of the pineapple strike have an effect upon the union on Lanai?

(Testimony of Pedro De la Cruz.)

A. I beg your pardon. I thought it was the loss of something else. The loss of our cause had a great effect on our [143] membership.

Q. What is the difference in membership between the time before the strike and at present?

A. Before the strike we had about 1300 members.

Q. How many members do you have now?

A. 860 to 900.

Q. Are you familiar with the house rules of the Hawaiian Pineapple Company on the Island of Lanai? A. Yes.

Mrs. Bouslog: Mr. Crockett, this is a document that was furnished to us. May the record show that I have handed a document marked "Causes for discipline or discharge," stamped "Hawaiian Pineapple Company," attached to which is a document entitled "Safety Rules. Lanai Plantation Company," because there is a reference to the safety rules on the first part, in the rules themselves, so that this is part of the same document. For the purposes of this case we are interested in rule No. 6 and rule No. 12.

Judge Biggs: This document may be admitted, subject to the same reservation as to relevancy.

Mr. Crockett: That is right.

Judge Biggs: Very well. Let it be marked Plaintiffs' Exhibit No. 12.

(The document referred to was marked Plaintiffs' Exhibit No. 12, for identification, and was received in evidence.) [144]

(Testimony of Pedro De la Cruz.)

PLAINTIFF'S EXHIBIT NO. 12

Causes for Discipline or Discharge

1. Fighting or attempting bodily injury to another insofar as such actions may interfere with working relationships.

2. Stealing, making fraudulent records, or malicious mischief resulting in the loss, injury or destruction of property belonging to other employees or the Company.

3. Insubordination, refusal or failure to perform work assigned, or use of profane or abusive language when used maliciously against another employee and/or when it constitutes insubordination.

4. Falsifying or refusing to give testimony when accidents are being investigated; making false statements when filling out application blanks for employment and/or making false statements when physical examinations are being made.

5. Introduction, possession or use on the job of habit forming drugs or intoxicating liquors, or reporting for duty under the influence of habit forming drugs or intoxicating liquors.

6. Conduct which violates common decency or morality.

7. Offering or receiving money or gifts in exchange for a job, better working place, or any change in working conditions.

8. Leaving your work without notice to and permission from immediate supervisor, except in case of emergency.

(Testimony of Pedro De la Cruz.)

9. Harboring a disease or condition which may endanger fellow employees, the Company's product or others.

10. Violation of posted safety rules.

11. Smoking or having open lights or fires within prescribed limits where such practice is forbidden.

12. Unexcused absences except in cases of emergencies or in case of sickness when notice must be given as soon as possible. During any one (1) month period any unexcused absences shall be treated as follows: The first offense may result in a warning, the second offense may result in a lay-off or discharge. An employee who fails to report to work for five (5) consecutive working days without proper authorization and notification shall be dropped from the roles.

13. Sleeping on duty.

14. Gambling on Company premises at the Factory and/or in work areas during working hours on the Plantations.

15. Repeated tardiness. Tardiness during any one (1) month period will be treated as follows: The first occasion shall result in a warning and the second occasion may result in either layoff or discharge.

In the absence of special circumstances, it is understood that the above house rules will be limited to activities on the premises during working hours.

HAWAIIAN PINEAPPLE CO.,
LTD.

Admitted.

(Testimony of Pedro De la Cruz.)

Q. (By Mrs. Bouslog): Mr. De la Cruz, will you look at that and see if it is, to your knowledge, the present house rules or rather the house rules that were in effect at the time of the pineapple strike?

A. Yes, to the best of my knowledge.

Mrs. Bouslog: You may cross-examine, Mr. Crockett.

Cross-Examination

By Mr. Crockett:

Q. How much bond did you say you put up in the Makekau matter?

A. That was between \$3,000 and \$6,000. I am not sure of the exact amount, but between \$3,000 and \$6,000.

Q. That is, there were five defendants in that case, were there not?

A. There were five defendants.

Q. Bond set at \$1,000 each?

A. That would be \$5,000.

Q. And in the other case, Barbosa, there were eleven defendants, were there not?

A. Yes; eleven.

Q. And isn't it a fact that the bond was set at \$1,000 only in the case of Barbosa and John Maile?

A. Yes. I recollect getting two 500's and the rest 250, I think.

Q. Two 500's? [145] A. Yes.

Q. I think there were three. Victor Degamo was \$500. A. Barney.

(Testimony of Pedro De la Cruz.)

Q. And James Aikala, \$500, is that right?

A. Yes. To the best of my knowledge, two \$1,000, two \$500, and the rest were \$250.

Q. You were not present at the time of the incidents at the wharf, at the Kaumalapau Wharf, were you? A. No.

Q. Were you present at the incident which occurred in which Makekau and the others were charged? A. No.

Mr. Crockett: That is all.

Mrs. Bouslog: That is all.

(The witness was excused.)

Judge Biggs: Call your next witness, please.

Mrs. Bouslog: Mr. Crockett, will you stipulate that the record may show that Mr. De la Cruz is a Filipino?

Mr. Crockett: Yes.

Judge Biggs: You do so stipulate?

Mr. Crockett: I do so stipulate. I believe it is in the record.

Mrs. Bouslog: Your Honor, I believe it is in the record.

Judge Biggs: It is in obliquely that he is head of the Filipino Association. [146]

Mrs. Bouslog: Yes.

NOBORU HONDA

was called as a witness by and on behalf of the plaintiffs, and being first sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your full name, please?

A. Noboru Honda.

Judge Biggs: Will you keep your voice up, please? It is rather hard to hear in this room.

Q. (By Mrs. Bouslog): Will you try to speak up so we can all hear, and I will try to speak so you can hear me. Where do you live, Mr. Honda?

A. I live in Lanai City.

Q. How long have you lived in Lanai City?

A. For about 15 years.

Q. By whom are you employed?

A. I beg your pardon?

Q. Whom do you work for?

A. I work for Hawaiian Pineapple Company.

Q. Immediately before the pineapple strike, were you working for the Hawaiian Pineapple Company? A. Yes, I was.

Q. Are you a member of the International Longshoremen's & Warehousemen's Union?

A. I am. [147]

Q. How long have you been a member of the union? A. For about two years.

Q. Were you out on strike from July 10 to July 15, 1947? A. Yes, I was.

(Testimony of Noboru Honda.)

Q. Were you arrested during the course of that strike? A. Yes, I was.

Q. When were you arrested?

A. I don't recall the exact date when I was arrested.

Mrs. Bouslog: I think the record shows, your Honor.

Judge Biggs: Can you stipulate it?

Mrs. Bouslog: It is stipulated it was on August 1.

Judge Biggs: Right.

Mrs. Bouslog: Returnable before the district magistrate on August 6, continued from August 6 to August 22, and then again to August 28, the preliminary hearing, which extended for four days, the decision on whether to bind over for the grand jury being reached sometime in September.

Judge Biggs: Is that correct?

Mr. Crockett: That is correct, your Honor

Q. (By Mrs. Bouslog): What were you charged with in this complaint that was sworn out against you?

A. I was charged with inciting a riot or something like that.

Q. Was that what you might call the harbor incident? A. That is right. [148]

Q. Were you present at the time the harbor incident occurred? A. I was not.

Q. Were you down at the harbor at any time on the day the incident occurred?

(Testimony of Noboru Honda.)

A. Yes, I was.

Q. Will you tell the Court when you arrived at the harbor and what you did while you were down there?

A. During that time, the day of the incident, I got down at the harbor in the morning, I was picketing, and then I returned home, and I returned to the harbor again about ten minutes after the incident.

Q. By that time any trouble that there was was all over?

A. Yes, it was.

Q. Was everything peaceful?

A. Yes, it was.

Q. How did you arrive from Lanai City at the harbor?

A. I arrived in a private car.

Q. By yourself?

A. No; with five other boys.

Q. You say this was approximately ten minutes after the incident happened?

A. It is not exact, but about ten minutes.

Q. Can you name the other people who were present in the car with you at that time? [149]

A. As far as my memory goes, I can remember, Usuoka Yamani.

Mr. Crockett: We can't hear you.

Judge Biggs: Please keep your voice up. Counsel for the Attorney General and his assistants are over there, and they have to hear too or they cannot operate. Keep your voice up.

(Testimony of Noboru Honda.)

A. Mitsuyuki. That is his first name.

Judge Biggs: Mrs. Bouslog, I don't want to limit you, but he states he was there with five other boys. Is it necessary that we have their names?

Mrs. Bouslog: It certainly is, your Honor, because all of these people are charged.

Judge Biggs: But you are not trying that case here.

Mrs. Bouslog: That is correct. But this is showing the clear deprivation of constitutional rights.

Judge Biggs: Yes, but what does the names of those other five——

Mrs. Bouslog: They are plaintiffs in this action.

Judge Biggs: They are plaintiffs?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: All right. Will you continue, please?

Q. (By Mrs. Bouslog): Can you give the first name again? After Mitsuyuki, what was the last name? A. Oyama.

Judge Biggs: Speak up, please.

A. Tomita Nobuteru. [150]

Q. (By Mrs. Bouslog): After you arrived approximately at the same time you arrived, did you see anyone else coming from Lanai City on the way down to the harbor? A. Yes, I did.

Q. Who did you see or what did you see?

A. I saw a truckload of men coming down, and then later on about two cars coming down.

(Testimony of Noboru Honda.)

Q. After the incident was over? A Yes.

Q. You don't recall who was in those cars?

A. I do not.

Mrs. Bouslog: You may cross-examine.

Judge Biggs: Cross-examination.

Cross-Examination

By Mr. Crockett:

Q. Mr. Honda, did you testify at the preliminary hearing had at Lanai City in this matter after you were arrested?

A. What do you mean by "testify;" I don't understand the question.

Q. Did you go on the witness stand and make any statement in court? A. I did not.

Q. How about Tomita; do you recall whether he made any statement to the court?

Judge Biggs: Must we have Tomita in here at this point?

Mr. Crockett: I will withdraw the question, if the [151] Court please No further questions.

Mrs. Bouslog: All right.

Judge Biggs: That is all.

(The witness was excused.)

KAZOICHI HASHIMOTO

a witness called by and on behalf of the plaintiffs, being first sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name and place of residence, please?

A. Kazoichi Hashimoto, Lanai City.

Q. Are you employed by Hawaiian Pineapple Company? A. Yes.

Judge Biggs: May we have his name for the record, please?

Mrs. Bouslog: I am very sorry, your Honor. Kazoichi Hashimoto.

Q. (By Judge Biggs): That is your name?

A. Kazoichi Hashimoto.

Q. How do you spell the last name?

A. H-a-s-h-i-m-o-t-o.

Judge Biggs: Thank you.

Q. (By Mrs. Bouslog): How long have you been employed by Hawaiian Pineapple Company?

A. A little *over years*.

Q. Are you a member of the union?

A. Yes.

Q. Did you go on strike at the time the union did, on July 10? A. Yes.

Q. What is your racial extraction?

A. Japanese.

Q. Are you a citizen? A. Yes.

Judge Biggs: Do you desire any stipulation as to the racial extraction of the last witness?

(Testimony of Kazoichi Hashimoto.)

Mrs. Bouslog: I believe it shows in the record, since he is a plaintiff, your Honor.

Judge Biggs: Very well. Pardon me.

Mrs. Bouslog: If the Court will permit me some shortcuts.

Judge Biggs: Go ahead. Yes. If the questions get too leading, we will expect Mr. Crockett to object.

Q. (By Mrs. Bouslog): You were charged with unlawful assembly and riot at the same time the 48 other people were charged?

A. Yes, I was.

Q. That was the incident at the harbor?

A. Yes.

Q. Will you tell the Court whether you were present at the [153] time this happened?

A. When that incident occurred, before the incident occurred I was sitting on the rail by the Manuwai, and when the incident occurred I walk up to the "kapu" line and I stood there, and when it was over I walked back.

Judge Biggs: The kapu line or white line, is that it?

Mrs. Bouslog: That is right.

Judge Biggs: The forbidden line. Kapu means forbidden, does it?

Mrs. Bouslog: Keep Out.

Judge Biggs: What about the Manuwai or the railing you were sitting on? Where is that? What does that mean?

(Testimony of Kazoichi Hashimoto.)

A. That is where the Hawaiian Pineapple Company has a small passenger boat, plying between Lanai and Maui.

Q. (By Mrs. Bouslog): You were sitting on the railing of the boat?

A. Yes. That is this side of the kapu line.

Q. Were you ever at any time during the incident inside the kapu line? A. No.

Q. Do you know any of the other plaintiffs who were charged with unlawful assembly and riot who were not there at the time, of your own knowledge?

A. Yes; a school boy.

Judge Biggs: Who? [154]

Mrs. Bouslog: A school boy.

Judge Biggs: Oh. A school boy.

Q. (By Mrs. Bouslog): Do you know of anyone else? A. Mitsui Shimizu.

Q. Mitsui is the first name and Shimizu is the last name. Where was Mitsui Shimizu at the time?

A. He was up at the hospital.

Mrs. Bouslog: You may cross-examine.

Q. (By Judge Biggs): The school boy, was that the same man that testified here this morning?

A. Yes.

Q. The second witness or third witness?

A. Yes.

Judge Biggs: Cross-examine.

Q. (By Mr. Crockett): Did you testify in district court on the preliminary hearing?

A. No.

(Testimony of Kazoichi Hashimoto.)

Mr. Crockett: That is all.

(The witness was excused.)

Judge Biggs: Next witness, please. [155]

MASAO GIMA

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please.

A. Masao Gima.

Q. Where do you live? A. Lanai City.

Q. By whom are you employed?

A. Hawaiian Pines.

Q. Are you a member of the union?

A. Yes.

Q. You went on strike with the union July 10th?

A. Yes.

Q. You were charged, along with 48 other people, for unlawful assembly and riot, because of a harbor incident? A. I was.

Q. Will you state to the court whether you were present at the time that took place?

A. I was not.

Q. You were not? A. No.

Q. Were you at the harbor at any time that day?

A. In the morning, 10 minutes after this happened. [156]

(Testimony of Masao Gima.)

Q. You came down to the harbor 10 minutes after this happened? A. Yes.

Q. Who did you come down with?

A. With (Fred Okura). In a car.

Q. Were there any other people with you?

A. Four or five of the boys.

Q. Were any of them defendants in the case?

A. I don't think so.

Cross-Examination

By Mr. Crockett:

Q. Did you testify in the district court at all?

A. No.

(Witness excused.)

HIROSHI OSHIRO

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name for the record, please. A. Hiroshi Oshiro. (Spells.)

Q. In the course of the transcript before the district magistrate, what is your nickname by which you are generally known? A. Molokai.

Q. What is that name? [157]

A. That is the name of the island.

Q. You were charged with unlawful assembly

(Testimony of Hiroshi Oshiro.)

and riot at the time of the incident down at the harbor? A. Yes, that's right.

Q. Were you present at that time?

A. That's right.

Q. Did you ever cross the kapu line while the trouble was going on? A. I did not.

Mrs. Bouslog: Mr. Crockett, I haven't had made available to me yet the pictures in the book you had identifying the exhibits you stipulated into the record. May I borrow your pictures for a moment?

Mr. Crockett: I might have pictures which you objected to.

Judge Biggs: Can you get the other book for her?

Q. You were present at the preliminary hearing, is that correct? A. Yes, I was.

Q. Were you identified in any pictures except in the peaceful pictures, sitting on the wall?

A. I was only identified in the peaceful pictures.

Judge Biggs: I am not quite clear what you mean, Mrs. Bouslog. Almost any still picture is a peaceful picture.

Mrs. Bouslog: The transcript of the record, stipulated [158] into the record, shows there was one film——

Judge Biggs: You are now talking about the motion picture?

Mrs. Bouslog: Yes, where there are a number

(Testimony of Hiroshi Oshiro.)

of those in this case, and where the only identifications of them were of pictures where they were sitting along a seawall, and the testimony shows that those pictures were not taken until after the incident occurred.

Judge Biggs: All right. I understand the point.

Mrs. Bouslog: They were taken later.

Judge Biggs: I think we grasp what you mean.

Mr. Crockett: I have here the maps showing Kaumalapau Harbor. If counsel has no objection, I would be glad to put them in evidence.

Judge Biggs: Have you any objection?

Mrs. Bouslog: None at all, your Honor.

Judge Biggs: We will call it Exhibit "B." Is it a map showing Lanai City?

Mrs. Bouslog: No, your Honor, this is five miles from Lanai City.

Judge Biggs: I realize that.

Mr. Crockett: It shows the harbor——

Judge Biggs: Let's not be too technical. One witness testified the harbor was actually on the seacoast.

(Map of harbor, etc., received and marked: Defendants' Exhibit B.')

[159]

Judge Biggs: The Clerk hands to the Court an order of consolidation in these cases.

Before we proceed in this matter, has the witness, Mr. Sibolboro been located yet?

Mrs. Bouslog: We are trying to locate him. If

(Testimony of Hiroshi Oshiro.)

not this afternoon, we will have him the first thing tomorrow morning.

Judge Biggs: Or you can have his testimony stricken out. I am afraid the remark made by the Court to the effect that we wanted him to remain here may perhaps have caused him some mental agitation or something.

Mrs. Bouslog: No, your Honor, not at all; he understood he was to come here this morning.

(Discussion between Court and counsel as to the number of witnesses remaining to be called and with regard to the calling of defendants' witnesses at the conclusion of the plaintiffs' case.)

Mr. Crockett: If the Court please, I have some pictures here of the locality of the Kaumalapau harbor incident, of which I have furnished counsel with a copy, and she has no objections.

Mrs. Bouslog: I have one picture that I think is not proper for you to put in at this time. That is this picture. (Handing picture to Mr. Crockett.) Apart from that picture I have no objection. [160]

Mr. Crockett: Then there will be six, if the Court please.

Judge Biggs: You have no objection to the withdrawal of the one?

Mr. Crockett: We will offer them as a group of six.

Judge Biggs: Any objection to Defendant's Exhibit "C"—these pictures.

(Testimony of Hiroshi Oshiro.)

Mrs. Bouslog: No objection.

Judge Biggs: They will be marked Exhibit C, 1 to 6, for defendants.

(Six pictures marked Defendant's Exhibit (1 to 6) "C," respectively.)

Mr. Crockett: Just a word of explanation. I would say the first three show the approach and the others show the harbor, by the wharf, and we will offer further evidence to identify the scenes more in detail.

Cross-Examination

By Mr. Crockett:

Q. Oshiro, did you testify before the District Magistrate when we had the preliminary hearing on this matter?

A. At Lanai, do you mean?

Q. At Lanai City? A. No, I did not.

Mr. Crockett: No further cross-examination.

Mrs. Bouslog: No further examination.

(Witness excused.) [161]

SHIGERO YAGI

called as a witness by the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please.

A. Shigero Yagi.

(Testimony of Shigero Yagi.)

Q. Where do you live?

A. At Kaumalapau.

Q. Is that down at the harbor itself?

A. Yes. What?

Q. Is that down at the harbor itself?

A. Yes, sir, it is about 200 yards, about that, from that harbor.

Q. In other words, you live at the side, down in the little housing area next to the harbor?

A. Yes.

Q. Are you employed by the Hawaiian Pine-apple Company?

A. Yes.

Q. Are you a member of the union?

A. Yes.

Q. Did you go on strike with the union on the 10th of July?

A. Yes.

Q. Now you were charged, along with the 48 others, for riot and unlawful assembly on the 1st of August, is that correct? [162]

Q. Were you present at the time of the so-called harbor incident?

A. Yes.

Q. When did you go down to the harbor on Monday?

A. About 9:30. I went fishing.

Judge Biggs: Your questions and the answers are in a little too low a tone; and it goes progressively down the scale.

Q. What were you doing at the harbor on July 15, 1947? Were you down at the harbor on July 15, 1947?

A. That day?

(Testimony of Shigero Yagi.)

Q. Were you down at the harbor at that date?

A. Monday?

Q. Yes. A. Yes.

Q. When did you first go down there?

A. Oh, I went about 9:30.

Q. What did you go down there for?

A. For fishing; spear fishing.

Q. Did you have your spears and your equipment with you? A. Yes.

Q. How long did you stay down there?

A. Oh, up to about 2:30 in the afternoon.

Q. What did you do then?

A. I went home, and then I saw people who came down, and [163] joined them.

Q. And were you present at the time the so-called incident happened? A. Yes.

Q. Did you at any time cross the kapu line?

A. No.

Q. Where were you? Were you sitting on the seawall, or where were you at the time?

A. Yes, I was sitting on the seawall.

Q. Where were you sitting?

A. On the seawall.

Q. (By Judge Biggs): You were sitting on the seawall?

A. Yes.

Q. Did the police say that it was all right for you to sit on the seawall; for the boys to sit on the seawall? A. Not that I know of.

(Testimony of Shigero Yagi.)

Cross-Examination

By Mr. Crockett:

Q. Were you arrested with the or among the other boys? A. Yes.

Q. Which group were you arrested with, the first group or the second?

A. The second group.

Q. What? A. The second group. Eleven.

Judge Metzger: Which group was it?

Mrs. Bouslog: He was arrested, as the record shows, with the group of 10 others; in other words, that first group that was arrested.

Judge Metzger: He is a plaintiff?

Mrs. Bouslog: Yes, your Honor.

Q. And when they had the hearing in your case what did you do, waive preliminary hearing?

A. Yes.

Mr. Crockett: That's all.

Redirect Examination

By Mrs. Bouslog:

Q. Just one question on redirect: Did you talk to the police? Did you give a statement to the police about what you were doing at the time the incident occurred? A. Yes.

Q. Did you tell them that you were talking to anyone at the time; about the time the incident happened? A. I don't remember.

Mrs. Bouslog: No further questions.

(Witness excused.)

HENRY K. AKI

called as a witness for the plaintiffs herein, being duly sworn, testified as follows:

Direct Examination [165]

By Mrs. Bouslog:

Q. Will you state, for the record, your name, please? A. My name is Henry K. Aki.

Q. By whom are you employed?

A. By the Hawaiian Pines Company.

Q. Were you a member of the union at the time of the strike? At the time the strike occurred?

A. No.

Q. What did you do on the morning of July 15th?

A. On that morning I went spear fishing.

Q. Were you right down at the harbor at the time the incident occurred? A. Yes, I was.

Q. What did you do while the incident was going on?

A. Just when the incident started I took one step in the kapu line and stopped and watched.

Q. Were you arrested in connection with the charge of unlawful assembly and riot?

A. Yes.

Q. Along with the 45 other people?

A. Yes.

Q. Did Lieutenant Medeiros of the police say anything to you at the time you were booked?

A. Yes.

Q. What did he say? [166]

A. Lieutenant Medeiros told me "How come I

(Testimony of Henry K. Aki.)

was arrested!" He knew I wasn't in the union, so he thought it was funny.

Q. Who put up your bail, for backing you out?

A. Pedro de la Cruz put in a bail of \$100, and that is how I got out.

Q. Did you join the union after that time?

A. Right after Pedro de la Cruz pays my bail is when I joined the union.

Q. Did you have any conversation with any representatives of the Hawaiian Pineapple Company about the charge against you after that time?

A. Manuel Tavares, that is the superintendent down at the harbor, he knew I was not in the union, and I guess he must have told Lieutenant Medeiros about me not being in the union, and so that is how I got out, I think.

Mrs. Bonslog: The record will show, your Honor, that this Henry Aki was dropped as a defendant at the time of the preliminary hearing, and by motion of the prosecution.

Cross-Examination

By Mr. Crockett:

Q. Did counsel mean that that was prior to the preliminary hearing—was it not. I believe the record shows that.

Mrs. Bonslog: That is correct. The record shows the case was dismissed at the time when the defendants appeared [165] for their preliminary hearing, which was not held.

(Testimony of Henry K. Aki.)

Mr. Crockett: Then I have no cross-examination.

(Witness excused.)

NARCISCO SIPE

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please?

A. My name is Narcisco Sipe.

Q. Where do you live? A. Lanai City.

Q. Who do you work for?

A. Hawaiian Pineapple Company.

Q. Were you working for the company at the time of the pineapple strike? A. Yes.

Q. Were you a member of the union?

A. Yes.

Q. Were you charged with unlawful assembly and riot in connection with the charge of assault and battery against the Kalua brothers?

A. Yes.

Q. Will you tell the Court what you know about that incident?

A. On the morning of—that morning the whistle blow 5:15, [168] and I woke up and got out from the house and went to the lavatory to move my bowels. After that I came out and I saw a bunch of boys but I cannot recognize who they were, and

(Testimony of Narcisocco Sipe.)

then they started bunching, and it was too dark to recognize, so I ran away and ran away and joined the other union members going towards to the union hall.

Q. Did you make a statement about this to the police officers? A. Yes, I do.

Q. In other words, they picked you up for questioning, and you told them what you had been doing? A. Yes, I do.

Q. Now you are also charged and you face a 40 year sentence as a result of the pineapple strike of——

Judge Biggs: What do you mean by that?

Mrs. Bouslog: Two 20 year felony charges.

Judge Biggs: Yes, but the question of sentence lies with the Court. You had better rephrase your question.

Mrs. Bouslog: I withdraw it, your Honor.

Judge Biggs: Very well.

Q. You were also charged in connection with the incident at the wharf, at the harbor, is that right? A. That's right.

Q. Will you tell the Court whether you were involved in that incident? [169]

A. I was not involved in that incident.

Q. Tell the Court where you went or where you were at the time, and what you did.

A. I went to the harbor 10 minutes after the incident.

(Testimony of Narciscco Sipe.)

Q. In other words, were you at the time of the incident—Where were you at the time when the incident happened?

A. I was sitting on the seawall.

Judge Metzger: I don't get that. He went to the harbor 10 minutes after?

Q. What time did you come down—at the time you arrived at the harbor, was it before or after the incident was over?

A. After the incident.

Q. Where were you before you came down to the harbor; where did you come from?

A. By the city.

Q. What place in the city?

A. I was at the union hall.

Q. And when you came down to the harbor you then sat on the seawall, is that it?

A. The incident was over.

Q. But you were sitting on the seawall?

A. It was over, but——

Q. You were sitting down on the seawall?

A. Yes.

Q. You were identified in the preliminary hearing by the [170] picture showing you sitting on the seawall, is that correct? A. That's right.

Mrs. Bouslog: The record will so show, in the stipulated part——

Judge Biggs: Very well.

Mrs. Bouslog: No further questions.

(Testimony of Narciseco Sipe.)

Cross-Examination

By Mr. Crockett:

Q. Where do you live with respect to where Kalua and Nahinu were living?

A. They live at block 33, house 7.

Q. Where do you live?

A. I live about 100 yards away from them; it is about a block.

Q. Well, on which side do you live, towards where the union hall was or on the other side?

A. Oh, the union hall is far away. I guess it is about a quarter of a mile away from my home.

Q. So I understand that you were over to Kalua's house for the purpose of moving your bowels there?

A. Yes, that is the place that I moved my bowels, because it is the only lavatory there.

Q. And were you present when this bunch arrived at the house where Kalua was?

A. No, I did not.

Q. Where were you then? [171]

A. I ran away.

Q. Well, did you run away before they arrived or run away after they arrived?

A. I ran away because I don't like to be beaten up.

Q. Well, I am asking you: When did you run away, before they arrived or after they arrived?

A. Before they arrived.

Q. You ran away before they arrived at Kalua's?

(Testimony of Narciseco Sipe.)

Mrs. Bouslog: I think perhaps the witness is not understanding the question. It might be that we need an interpreter for this witness for a full understanding of the testimony.

Judge Biggs: Well, we got through his examination in chief without difficulty, and without one, and we will take the cross-examination without it, and then if you desire an interpreter later, you may have one.

Q. If you ran away before they arrived, how did you know they were going to beat up somebody? A. Well, that I don't know.

Q. Well, after they had this trouble you were picked up by the police? A. Yes, I was.

Q. And do you recall whether or not the police confronted you with Kahawanui?

A. I was picked up by officer Nicholas Dorondo, of Lanai [172] City.

Q. Did they bring you face to face with one of the boys that was beaten up? A. Yes.

Q. Which one was that?

A. Sam. He accused me of beating him.

Q. And he recognized and identified you?

A. He identified you but I was not there.

Q. When he identified you that was in the presence of the police?

A. What is that, Mr. Crockett?

Q. When Sam identified you and said that you were there, that was in the presence of the police officers?

(Testimony of Narcisecco Sipe.)

A. Oh, that was in the court house.

Q. In the court house. That's all.

Redirect Examination

Judge Biggs: Do you want an interpreter?

Mrs. Bouslog: No, I think, your Honor, that Mr. Crockett in the course of the questioning straightened out what I thought was a misunderstanding.

Q. Mr. Sipe, when you left the lavatory did you see some men fighting, when you left the lavatory?

A. As soon as I got out from the lavatory I was standing a little while buttoning up my pants, so and so, and then I started to see they were punching each other, but I cannot [173] recognize who they were, and then I start running.

(Witness excused.)

ABRAHAM MAKEKAU

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please.

A. My name is Abraham Makekau.

Q. Where do you live?

A. Lanai City, Lanai.

Q. Do you work for the pineapple company?

A. Yes, I do.

(Testimony of Abraham Makekau.)

Q. Are you a member of the union?

A. Yes, I am.

Q. Did you go on strike with the union on the 10th?

A. Yes, I did.

Q. You were charged for unlawful assembly and riot in connection with the assault and battery on the Kalua brothers.

A. Yes.

Q. Will you tell the Court what you know about that incident?

A. Well, on the day before the incident I heard rumors about—rumors going around about that they were going down to the Kalua's, and tell them not to cross the picket line, so since I knew Sam, well I thought that I would break it up in the [174] beginning, and go down—

Judge Biggs: You will have to keep your voice up. These ladies and gentlemen must hear, and so keep your voice up, please.

A. To go down and tell them not to cross the picket line, since I knew them well, but on my way down I met some of the boys coming up, and they told me that there was some shoving and pushing down there, so on my way down, before I reached where the incident happened, I saw Jacob, he was over there, and I guess Sam Kalua recognized me, and pointed me out, and then after that I left there and came back to the union hall.

Q. What Jacob, Jacob Kalua?

A. Yes, Jacob. Jacob Kalua.

(Testimony of Abraham Makekau.)

Mrs. Bouslog: The record shows they are Sam and Jacob.

Judge Biggs: Sam and Jacob.

Q. Did you tell the police this when you were being question up there, by them?

A. Well, when I was picked up in the morning by the officers, the police brought me down to the police station, and they told me if I knew Sam and Jacob, and I told them that I knew Sam and Jacob about five years—I knew Sam about five years, but I didn't know Jacob well, so they brought Jacob in and Sam and told them to identify me, and they pointed me out.

Questions by Judge Biggs: [175]

Q. What time of day was this?

A. It was about 8:30 when I was down there.

Q. No, the time of the incident?

A. It was about 5:30.

Q. What time does the whistle blow on Lanai?

A. 5:30.

Q. Is that when everyone is working on Lanai?

What time do they ordinarily get up?

A. When the first whistle blows.

Q. That is what time?

A. Either 5:30 or 5:15.

Q. You are comparatively early risers on Lanai.

Is it light or dark at that time?

A. Well, it is dark; pretty dark.

Q. Now you were also charged with riot and unlawful assembly as as a result of the harbor incident, is that correct?

A. Yes, I did.

(Testimony of Abraham Makekau.)

Q. Were you down at the harbor at the time the incident occurred?

A. Well, at the time of the incident I was not down there because I brought up some matches. I was on a motorcycle.

Q. Were you down there before and afterwards?

A. Well, during the morning, about 10 o'clock, we had a picket line down there, and that is when I was there.

Q. I did not quite understand what you said. You said you [176] had, what was it—a motorcycle, was that what you had?

A. Well, I was riding on a motor-cycle, and we were down there, so we came up to the city again, up to the union hall, and then when we went back everything was all pau.

Q. Where were you before the incident?

A. Before the incident I was up—on my way up.

Q. On your motor-cycle on the way up?

A. Yes.

Q. How long after the incident did you arrive?

A. I arrived about—it was about five minutes afterwards.

Cross-Examination

By Mr. Crockett:

Q. What portion of Lanai do you live in?

A. Well, I live block 20, the house is way up towards Honopu.

(Testimony of Abraham Makekau.)

Q. About how far away is that from where the Kalua brothers were living?

A. Oh, it is about—I think it is less than a quarter of a mile.

Q. In order to go to the house where the Kalua brothers lived was it necessary to go past the union headquarters?

A. Well, yes, you pass on the main street.

Q. What time did you get up that morning?

A. I got up about—it was about 10 after five, I think.

Q. You say you had heard rumors the day before that someone [177] was going down there?

A. Yes.

Q. Were there any orders given or any instructions given about it? A. No.

Q. Just loose talk that you heard about it?

A. That's all.

Q. About what time during the day was it you heard that talk?

A. That was on the beginning of the incident at the harbor.

Q. About what time?

A. Well, it was about seven o'clock.

Q. You did not go down to warn them at that time, did you?

A. No, because I was in the union hall.

Q. You say when you got up in the morning you decided to go down at that time to warn them?

A. Yes, on *may* way down to the union hall.

(Testimony of Abraham Makekau.)

Q. How many went down altogether from the union hall to where this trouble took place?

A. I don't know.

Q. Well, about how many?

A. I saw some were on the road, but I don't know who they were.

Q. I see. How many were there, about?

A. I don't remember.

Q. Do you remember when you were questioned about this, [178] saying there were about 25 persons that went down?

A. I don't remember.

Q. Well, can you give us any idea; was it more than two or three?

A. I saw, when I went down—I saw some were coming up.

Q. But when you went down had the fight occurred already, or was it after you got there that the fight occurred?

A. When I got down there everything was done already.

Q. It was done already? A. Yes.

Q. You did not see any fight at all when you got there? A. No.

Q. Were you questioned by the police in this matter? A. Yes.

Q. Which officer was it that questioned you?

A. I don't know whom.

Q. Do you recall an officer by the name of Seabury on Maui? A. I think so.

(Testimony of Abraham Makekau.)

Q. (By Judge Biggs): Is the answer "yes"?

A. Yes.

Q. Is he the one who questioned you?

A. I don't remember.

Q. You remember Seabury? A. Yes.

Q. You don't remember whether he questioned you or not? [179] Will you answer the question?

Judge Biggs: Answer the question, please.

A. Yes.

Q. Do you recall when Seabury asked you the question of about how many men went down, and you said "about 25"?

Mrs. Bouslog: I did not understand the witness to say that he knew. The witness said he didn't know whether officer Seabury questioned him or not.

Judge Biggs: That's right, he said he knew there was an officer named Seabury, and he didn't know whether that was the one, the officer, who questioned him.

Q. Is that correct?

Mrs. Bouslog: I object to the question. It is assuming something not in evidence.

Judge Biggs: I think it is properly within cross-examination, Mrs. Bouslog.

(Question read by reporter, as follows: "Do you recall when Seabury asked you the question of about how many men went down, and you said 'about 25.' ")

(Testimony of Abraham Makekau.)

Judge Biggs: Now you are assuming something there, Mr. Crockett.

Mr. Crockett: I will withdraw the question.

Judge Biggs: Make it "the officer," unless you can make the witness say it was Seabury.

Q. Do you recall when the officer asked you the question [180] of about how many men went down there, and you said "about 25 men"?

A. I don't remember the question.

Q. And do you recall that the officer asked you "To where"? and you answered "I went down block 33, and then the fight went on"?

A. I don't remember.

Q. And do you recall the officer asking you the question: You were asked: "You went down to Kalua's place, is that right"? and you answered: "That's right"?

A. That I went down, yes, to warn them.

Q. And do you recall whether or not the question was asked: "What happened when you got there?" to which you answered "Had a riot."

A. No.

Q. You say "no," or you don't remember ?

A. I don't remember him asking me that.

Q. Do you recall further the question was asked "When you got down to this particular house they started fighting in the rear of the house?" to which you answered "I saw them fighting."

A. I don't remember telling him that.

Q. And do you recall this question, "And you

(Testimony of Abraham Makekau.)

want to say that while the fight was going on you were standing by looking?" to which you answered "Maybe I was trying to get in, but too [181] many guys?"

A. I didn't make that statement.

Q. And do you recall being asked the question: "What do you mean by trying to get in?" and you answered "Get in and help the strikers, but they had him already"?

A. No, I did not say that.

Q. Do you recall being asked this question: "Could you identify any of them that beat up these two brothers?" to which you answered that "I don't know, but when he got through and he said he got enough, and I guess he saw me."?

A. No, I didn't say that.

Q. And the further question was asked. "Who said he got enough?" to which you answered "I guess Sam's brother"?

A. I don't remember.

Q. So as I understand your testimony at the present time it is that the fight all took place before you got down to where this incident occurred?

A. Yes.

Q. And was all finished?

A. Yes, that is when I saw Jacob.

Q. Did you talk with Jacob? A. No.

Mr. Crockett: That's all.

Judge Biggs: Any redirect?

Mrs. Bouslog: No.

(Witness excused.) [182]

Judge Biggs: How many more witnesses?

Mrs. Bouslog: Your Honor, I have finished my testimony in relation to the incident at the harbor and the Kalua brothers incident. I am ready now to go ahead with my case with respect to the Grand Jury, and I think, if the Court please, I would like that a recess be called at this time. I believe I will be able to finish in two hours in the morning.

I could dispose with one witness if the defendants will at this time stipulate that Mr. Jack Kawano, president of the Longshoremen's Union, who is sued in his individual and representative capacity, is still a member of the ILWU, and is being sued in his representative and individual capacity, and that will dispose of that witness, otherwise we will have to call him.

Miss Lewis. We stipulate he was a member of the union, and as to the office he holds, but my idea of representative capacity is that it is wholly a question of law, as to whether he can bring a class suit in a matter of this kind.

Mr. Symonds: Will you stipulate he will so testify, Miss Lewis?

Miss Lewis: I cannot stipulate in the matter. We had a witness here this morning,—and if it is directed to the idea he would testify along the same lines, that was just a [183] matter of conclusion, that the union members were in fear,—and I don't think it proved anything.

Mrs. Bouslog: We are talking only about the representative capacity.

Judge Biggs: What is the point of having him come in here, only to have him testify that from his understanding he is bringing suit in his representative capacity?

Mrs. Bouslog: It was denied, your Honor.

Judge Biggs: It was denied? I think you had better, perhaps, bring him. We will adjourn until 9:30 tomorrow morning, Saturday, and the Court will stand adjourned at this time.

(Whereupon an adjournment was taken until 9:30 o'clock a.m., Saturday, April 4, 1948.)

April 24, 1948, Morning Session

All parties present as at previous sessions, upon the Clerk calling the cases, the trial resumed as follows:

Mrs. Bouslog: I believe that Mr. Sibolboro is in the courtroom.

Judge Biggs: Suppose you call him back.

NICHOLAS C. SIBOLBORO

a witness for the Plaintiffs, resumed the stand, having been previously sworn, was examined further as follows:

Mrs. Bouslog: Give your name and spell it.

The Witness: Nicholas C. Sibolboro.

Judge Biggs: Now cross-examine at your convenience, Mr. Crockett.

(Testimony of Nicholas C. Sibolboro.)

Cross-Examination

By Mr. Crockett:

Q. Nicholas, you testified yesterday that you were arrested at Wahiawa? A. Yes, sir.

Q. Wasn't the cause of your arrest that you, in the course of picketing, laid down on the road in front of a truck? A. Right.

Q. Is that right? A. Yes.

Q. And in order for the truck to proceed along the highway the police officers had to come and take you away? [185]

A. That's right.

Mr. Crockett: That's all.

Q. (By Judge Biggs): Was the truck moving when you laid down? A. No, sir.

Judge Biggs: That's all.

Mrs. Bouslog: Just one question.

Judge Biggs: Just a moment, please. A rather serious question has come up here. I would like to have counsel's reaction to it immediately. None of these witnesses has been informed of his constitutional rights respecting testimony which might tend to incriminate him. For example, this witness and other witnesses have testified to acts which may be misdemeanors, or even felonies under the laws of the Territory. For example, this witness testified that he laid down in front of a truck on the highway.

Mrs. Bouslog: I have explained to each of the defendants myself what their constitutional rights are.

(Testimony of Nicholas C. Sibolboro.)

Judge Biggs: And you represent them also in those other proceedings?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: In all of them?

Mrs. Bouslog: Yes, your Honor.

Judge Harris: You then certify to the Court that you have undertaken in each instance to particularly advise each person who otherwise might be a defendant in a criminal case [186] as to his constitutional rights to refuse to take the stand?

Mrs. Bouslog: Let me look at my list.

Judge Harris: Yes, I wouldn't want any question to arise, and I know Judge Biggs wouldn't.

Judge Biggs: No, I wouldn't, nor Judge Metzger, or any or all of the members of the Court.

Mrs. Bouslog: Your Honor, I have been the counsel for all of the defendants for approximately two years from the time of the sugar strike. I have talked to each one of them at various times. As a matter of fact, I have been trying to inform them of what their constitutional rights are, and in relation to these defendants specifically, each one of them at the time he took the stand was aware that he has a right not to testify against himself, although, as your Honor has observed from the various reports no police officer or no district magistrate in the Territory ever so advised the defendants before.

Judge Biggs: They were aware of their constitutional rights not to testify because you so informed them?

(Testimony of Nicholas C. Sibolboro.)

Mrs. Bouslog: Yes.

Judge Biggs: Now did you enter an appearance for all the defendants in these two criminal proceedings?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: And you presently represent them?

Mrs. Bouslog: Yes, your Honor. [187]

Judge Biggs: You called them and you wanted them to testify?

Mrs. Bouslog: Yes, your Honor.

Judge Harris: Merely as a safeguard for the record, you might file in behalf of these various persons a mere statement to the Court that they are voluntarily taking the stand without any compulsion exercised and at your suggestion and to the end that a full disclosure of the facts may be made.

Judge Biggs: I think the record is clear as it stands. I think your statement is quite sufficient. As we understand it, you have talked to all of the witnesses who appeared and you informed them that they had the right not to testify. As a matter of fact, were any of them subpoenaed outside of Mr. Young?

Mrs. Bouslog: No, none of the plaintiffs.

Judge Biggs: None of the plaintiffs' witnesses, and you informed them that they had a right not to testify, and as to their constitutional rights?

Mrs. Bouslog: Yes, your Honor.

(Testimony of Nicholas C. Sibolboro.)

Judge Biggs: And you represent all of the defendants in the criminal proceedings?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: You also represent all of these union members in respect to all criminal proceedings? [188]

Mrs. Bouslog: In respect to all criminal proceedings arising out of labor disputes.

Judge Biggs: We think that is sufficient. You had no further questions?

Mrs. Bouslog: Yes, your Honor, one question.

Redirect Examination

By Mrs. Bouslog:

Q. Mr. Sibolboro, were the 93 other people arrested with you charged with lying down in front of the truck? A. No, ma'am.

Miss Lewis: To which I object.

Judge Biggs: The answer is no.

Miss Lewis: There is no showing that they were arrested with Mr. Sibolboro.

Judge Biggs: The answer is no. Would you give Miss Lewis a chance to interpose her objections, please? Don't speak quite so promptly.

Mrs. Bouslog: No further questions.

Judge Biggs: Any further cross-examination?

Mr. Crockett: No further questions.

(The witness was excused.)

Mrs. Bouslog: Your Honor, I would like to read into the record at this time in connection with the plaintiffs' contention that there is a serious danger of loss of jobs on the part of the plaintiffs here, the defendants in the criminal [189] actions in the Territory in the event they are forced to stand trial.

Judge Biggs: Read what into the record?

Mrs. Bouslog: I am reading from a part of the oral decision rendered by the Honorable Cable Wirtz for the County of Maui, when Mr. Crockett, the Prosecutor, was present on that day, as was I. The only part that is relevant to this proceeding is the part in which the judge discusses the company rules. It is very short and I would like to read it into the record.

Mr. Crockett: I object, if the Court please, because it has no bearing whatever on the issues of this case. The Court in the course of that particular case made reference to certain things, and there is no showing in the decision whether or not it is based upon his personal knowledge. It was not evidence in the case. It has no bearing on this particular case. He was not an employer and had no connection with the company, and he was in no position whatever to see the effect of the company rules or whether or not people had been discharged because of company rules. It was merely after the argument in which those rules were discussed the Court made a kind of general observation. The statement itself will show what he said was not material to the case.

Judge Biggs: We have very serious doubts as to its relevancy. It is, however, a matter of which we could take [190] judicial notice, so probably it would be of some aid to the Court to have it read into the record. We will overrule the objection and make the usual ruling that it is subject to a motion to strike. Read the paragraph and you can put the paper in evidence.

Mrs. Bouslog: It appears to be in the Circuit Court of the Second Circuit, Territory of Hawaii vs. Basiliso Arruiza. This is an appeal in mitigation, Criminal No. 2242. We have the system, your Honors, that if a defendant pleads guilty before the District Magistrate, then he cannot thereafter change his plea or get a jury trial, if he pleads guilty in the first instance.

Judge Harris: The plea cannot be vacated thereafter on any ground?

Mrs. Bouslog: No, except with the permission of the Court. (Reading from Plaintiff's Exhibit No. 13.)

"The Court: I think I am in a position to consider the matter. Concerning the last matter referred to about the so-called company rule, I don't know exactly what the rules are. The Court does have some judicial knowledge that a jail sentence probably would jeopardize his position. Unfortunately this Court has known of situations where the fact that a man was charged has cost him his job. It places the Court in an unfortunate position. When he has pleaded guilty and places

himself at the [191] mercy of the Court, that defendant has been jeopardized in seeking employment to conform to the terms of probation. I have known several instances of that type concerning the pineapple company and although I think that is a matter of consideration, I don't think it is a matter which is vitally before the Court."

Judge Biggs: That is pretty remote, indeed. I think we will received the document nonetheless, Miss Lewis, subject to a motion to strike. Do you want to be heard?

Miss Lewis: I just want to enter an objection if the Court would reconsider it. It is stipulated that all plaintiffs in these cases at the time of the filing of the injunction still had their respective employers and their respective companies, and they have been charged long before. Therefore, apparently in some other company at some other time something else may have happend. I don't know how anything could be more remote.

Judge Biggs: Let's not argue the matter further. I think it is extremely remote; nonetheless it has been read into evidence, so let's waste no more time on it. Objection overruled. Exception noted. It is treated as being subject to a motion to strike. Let the document be marked as Plaintiffs' Exhibit 13.

(Thereupon, the document referred to was marked Plaintiffs' Exhibit No. 13 and received in evidence.) [192]

PLAINTIFF'S EXHIBIT NO. 13

In the Circuit Court of the Second Circuit
Territory of Hawaii

January A.D. 1947 Term

Criminal No. 2242—Assault and Battery

TERRITORY OF HAWAII,

vs.

BASILISO ARRUIZA,

Defendant.

ORAL DECISION

Rendered December 23rd, 1947

Present: Honorable Cable A. Wirtz, Judge Presiding; Mr. David W. Tallant, Deputy Clerk; Mrs. Ivy W. Parks, Reporter; Mr. Lyons K. Naone, Jr., Bailiff; Wendell F. Crocket, Esq., Deputy County Attorney; Mrs. Harriet Bouslog, Attorney for Defendant.

(Handwritten marginal note to read first paragraph into the record.)

The Court: I think I am in a position to consider the matter. Concerning the last matter referred to about the so-called company rules, I don't know exactly what the rules are. The Court does have some judicial knowledge that a jail sentence probably would jeopardize his position. Unfor-

tunately this Court has known of situations where the fact that a man was charged has cost him his job. It places the Court in an unfortunate position. When he has pleaded guilty and places himself at the mercy of the Court, that defendant has been jeopardized in seeking employment to conform to the terms of probation. I have known several instances of that type concerning the pineapple company and although I think that is a matter of consideration, I don't think it is a matter which is vitally before the Court.

The administration of criminal law serves two vital concepts. We go back to the law of Moses—an eye for an eye—and the deterrent factor. That is of course besides the punishment that the Prosecution concerns itself with. On the other side we have the individual treatment recognizing that people who come from different circumstances or are involved in different temperaments, perhaps, might have even psychological problems. We have the theory of rehabilitation in making the person a fit citizen to serve in the community. That is the side and phase that most defendants attempt to show the Court and what normally the Probation Department of every court is interested in. We have those two conflicting concepts that present themselves to every judge in imposing sentence.

There has been a lot said here about the circumstances of the defendant. The Court is satisfied that insofar as his residence in the Territory is concerned he has no criminal record. He has been

investigated on one occasion and unfortunately the record in the lower court shows that he was charged with participation in a riot matter during the pineapple strike. However, the presumption of law is that he is innocent of that charge until proven guilty beyond a reasonable doubt. As to the other charge referred to, the actions of the police speak more eloquently than the presumption. They did not see fit to press charges.

Of course the Court cannot be exact on this, nor can the Prosecution, but the only thing they have been able to elicit is that while on the Mainland United States in the vicinity of Seattle, Washington, he was involved with a girl, presumably on a sex offense. As he so eloquently stated, they were found living together in a room. That is over a period of nine years ago. That is also not a true indication of a man's character. So many offenses go unnoticed, unprosecuted, untouched, but be that as it may, that is the picture that the Court has of this man's criminal tendencies. Both crimes are crimes of passion but stemming from and directed towards different sources and for different reasons.

The one thing that concerns this Court is that this man on his own testimony was a former police officer. He knows and understand the value of law enforcement. He knows that even in his own community people are charged with offenses similar to this. And also, while I am not going to get into a moot questionable argument about whether a coca-cola bottle, full or empty, is a weapon imminently

dangerous to life, the Court does know it can pack quite a wallop if properly used and could cause serious damage.

This Court has always been very concerned about assault and battery because assault and battery cases are precursors of the lynch law. It is the taking of law into your own hands. From a deterrent angle, I have been very concerned where such force might have occurred in public where there is always that spark that could set forth an affray or mass fighting in the streets and so on.

This offense occurred at a private party. Counsel is correct that the forgiveness by the complaining witness, which affects his civil rights, is something that can be considered in mitigation. Unfortunately, once the Prosecution has the matter under consideration, it is sometimes unable to forgive.

I am concerned about one other thing in this case. Reading over the record in the matter—this Court itself, whenever it has arraignment, has been very careful to advise defendants of their rights in pointing out to them that if they were indigent, we would make an investigation to that effect, and if they were truly indigent we would see that they were represented at no expense to them by counsel. I find nowhere in this record of the proceedings where this defendant was asked whether he wished an attorney. The Supreme Court in a recent case, I don't recall the citation—the Supreme Court of the United States was very insistent upon that point. That is, apart from the interpretation.

Another thing that concerns the Court is that after finding the defendant guilty and asking the Prosecution for any recommendations—and you were not there, so this is no reflection on you—the Prosecution immediately points out the participation in a riot case and that he is committed to the Grand Jury of the Second Circuit. Other than that, there is no recommendation. The Court goes on—after reading aloud the report of the doctor, goes on and imposes sentence.

Bearing all these things in mind, the Court feels that it should modify the sentence imposed in order to really give justice in the matter. However, the Court will not go so far as to suspend execution of the sentence. This man's difficulty seems to arise after hours, recreation, and proceeds from an inability to either curb his appetite for drink or curb his emotions when under the influence. The Court being likewise mindful of the peculiar temperament of the race understands that sometimes they can hit each other on the head one day and kiss and make up the next day.

However, the Court will modify the jail sentence heretofore imposed to this extent: that the imprisonment will apply only during those periods when the defendant is not employed. That is, when there is work for him and he is willing to work, he shall of course surrender himself to the police within a reasonable period after his employment terminates for the day and be released in time to permit him

to take up his employment in the morning. Other than that, judgment will stand.

Mrs. Bouslog: May I thank the Court and request that if the Court would suspend the execution of that until after Christmas.

The Court: I will stay the mittimus—what has the Prosecution got to say about it? This is the 23rd of December.

Mr. Crockett: Well, if the Court please, I would suggest it be stayed until the 2nd of January. I think the Filipino holiday comes about the end of the year. I have no desire to deprive him.

The Court: The Court will stay the mittimus on the sentence as modified until the 2nd of January, 1948.

Now, is the Court's modification of sentence clearly understood?

Mr. Crockett: I think so, if the Court please, unless the Court wishes to make it a definite hour when he should return. I think in practice the police have found a little difficulty on that.

The Court: My purpose was within reason to permit this man his employment by confining him during periods of his recreation. I don't know whether they work on Saturdays, Sundays and so on. If Counsel can get together and present something more definite and satisfactory to the Court—. I hope you clearly understand what is in the Court's mind and what the Court intends to accomplish by its order.

Mrs. Bouslog: It seems to me, your Honor, that

your Honor's order is the most satisfactory because sometimes there is overtime work and sometimes not.

The Court: That is correct.

Mrs. Bouslog: And if the order is that he report a reasonable time after work, I am sure the police officers on the Island of Lanai will fix a reasonable time in case of any difficulty. An arbitrary fixing of the matter——

The Court: Might deprive him of overtime employment. That is correct.

Mr. Crockett: I will prepare the order of the Court and submit it to Counsel.

The Court: Very well. We will stand adjourned until further order.

(Second Circuit Court adjourned at 11:47 a.m.)

Dated at Wailuku, Maui, T. H., December 23, 1947.

Admitted.

Mrs. Bouslog: I will mark the part that was read into the record, your Honor.

Judge Biggs: Very well; proceed.

Mrs. Bouslog: Your Honors, we will now call Jack Kawano.

JACK KAWANO

a witness called by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please?

A. Jack H. Kawano, K-a-w-a-n-o.

Q. Where do you live, Mr. Kawano?

A. 3190 Upper Pauoa Valley Road.

Q. Are you a member of the ILWU?

A. I am.

Q. Are you at present an officer of the International Longshoremen's and Warehousemen's Union?

A. I am. I am one of the members of the International Executive Board, and locally I am president of the Longshoremen's Local, ILWU.

Q. Are you the Jack Kawano who is named as a plaintiff in one of these actions before the Court?

A. I am.

Judge Biggs: That is sufficiently definite.

Q. At the time the complaint in that case was filed, what [193] was the International Longshoremen's and Warehousemen's Union Territorial Council?

A. Well, at that time the Territorial Council was an organization of all of the various locals of the ILWU here in the Territory. The main purpose of that organization was to coordinate all

(Testimony of Jack Kawano.)

of the activities of the ILWU as closely as possible under one administrative system.

Q. Is the Territorial Council still in existence?

A. It is not.

Q. What happened to it?

A. Well, it automatically went out of existence as a result of a meeting held by representatives of various locals assembled here in Honolulu. The reason for that was because in the past few months back locals were consolidated on an industrial basis. In other words, all locals of the longshoremen were consolidated into one territorial local. Sugar the same; and pineapple the same; and miscellaneous the same. The necessity for coordinating as it was then under the Territorial Council was no more needed, because all of those various locals are now in four major locals.

Q. Tell me, Mr. Kawano, in longshore, sugar and pineapple is the bargaining done on a territory-wide basis?

A. As far as I can remember it is done on a territory-wide basis.

Q. Who represents the employers in the negotiations? [194]

A. Every employer that I can remember is represented by the Employers' Council.

Q. What is the Employers' Council?

A. Exactly what their duties are I don't know, but from what I recall their duties seem to be to help the employer group in negotiations in mak-

(Testimony of Jack Kawano.)

ing very important decisions dealing with labor-management relations, etc., etc.

Q. Now the complaint in this case states that you brought the action individually and in your representative capacity for and on behalf of the International Longshoremen and Warehousemen's Union and its members. Is that true?

A. That is correct.

Q. Why did you bring the action in that capacity?

Mr. Crockett: To which we object, if the Court please. It has no bearing on the issues of the case.

Judge Biggs: Objection overruled. We will take the answer.

A. In my opinion it was very important that I did that.

Judge Biggs: Just state why.

A. Because it affected all in general of the members that I represented. In other words, I wasn't only representative of the Longshoremen's Union, but I was in effect a representative of all of the members of the ILWU in the Territory.

Q. What effect, in your opinion from your observation, has the Unlawful Assembly and Riot Statute had upon the International [195] Longshoremen's and Warehousemen's Union in the Territory?

Mr. Crockett: We object to that as calling for a conclusion of the witness with no foundation laid on which to base his conclusion; also calling for

(Testimony of Jack Kawano.)

more or less a conclusion almost as to whether or not the law does have any effect on the rights of the union.

Judge Biggs: I think you should qualify the witness further as to foundation. What does he know about this situation? Objection sustained.

Q. (By Mrs. Bouslog): Mr. Kawano, how long have you been an officer of the ILWU?

A. Well, as an officer of the Longshoremen's Union I have been since 1937.

Q. Was the Longshoremen's Union the first group in the Territory organized by this union?

A. That's right.

Q. And in the course of your official duties as president of the longshoremen, have you had occasion to take any official action by the longshoremen's executive board that bears upon the Unlawful Assembly and Riot Statute?

A. We certainly did.

Q. Will you tell the Court what that was?

A. It was sometime about three or four months back. We had been negotiating with the employers for about eight months previous to that time, and we came to a point where we decided [196] that we had to have a showdown with the employers, and the majority of our members decided that there was going to have to be a showdown because the employers were not paying any attention to our negotiating committee, and they were putting a lot of heat on our men on the job. So we de-

(Testimony of Jack Kawano.)

cided to cut off negotiations about three months ago and go into a strike. At that time the negotiating committee of the Longshoremen's Union got together and planned the strategy for a strike. but this thing popped up, this thing of unlawful assembly. We were made to understand, according to the laws of the Territory, that it would be very possible that not only a few of our members, but a great portion of our members, if we did go out on strike and assemble ourselves on a picket line, would be picked up by the authorities and be thrown in the can for 20 years.

Judge Biggs: I think that takes it far enough. You renew your objection to the question?

Mr. Crockett: Yes, if the Court please, on the same ground I stated.

Judge Biggs: Same ruling; objection overruled, and note an exception. Has the question been answered?

Mrs. Bouslog: Will you read the question?

(The question was read by the reporter.)

Q. (By Mrs. Bouslog): What effect has the Unlawful Assembly and Riot Statute had on the unions in the Territory? [197]

A. The effect it has in the Territory was such that it prevented us from making proper deliberations insofar as strikes and other things dealing with concerted activities are concerned.

Q. What do you mean by us, Mr. Kawano?

A. What is that?

(Testimony of Jack Kawano.)

A. I mean all of the members in labor unions. In this case particularly the ILWU members.

Q. What do you mean by "us"?

Q. Do the employers in the longshore industry in the Territory submit wage questions to arbitration when they can't be settled otherwise?

A. They do not.

Q. So what methods do you have of enforcing the union's demands in the event negotiations and mediation break down?

A. The only way to settle an issue like that between an employer and a union is by straight negotiations or by strikes.

Mrs. Bouslog: No further questions.

Cross-Examination

By Mr. Crockett:

Q. Mr. Kawano, you said it was about eight months ago. Do you mean eight months from this time, or when was that more definitely?

A. Exactly what do you mean by eight months ago?

Q. In your last answer you mentioned something about your [198] executive board discussed the conditions that existed and you said you had to have a showdown because they were putting a lot of heat on, and you said that this was about eight months ago.

A. I state, if I remember correctly, that about three months ago our executive board met as a re-

(Testimony of Jack Kawano.)

sult of not reaching any decision after about eight months of negotiations.

Judge Biggs: Just answer the question first and then you can make your observation.

Q. I just want to know the time. Then you mean three months from now, three months before the present time? A. That's right.

Q. That would be sometime the month of January or February? A. That's right.

Q. You also stated that you were made to understand that there were certain things about members being picked up and thrown into the can for 20 years. Who gave you that understanding?

A. The understanding I got was an interpretation of the so-called Unlawful Assembly Act.

Q. By whom? A. By various people.

Q. Well, did those people appear before the executive board and explain it to the Board?

A. Not exactly to myself, but those things have been brought [199] out,——

Q. You mean that it was an understanding,——

Judge Biggs: Let the witness complete his answer, Mr. Crockett.

Mr. Crockett: Pardon me.

A. What is the Unlawful Assembly Act? What is the maximum?

Judge Biggs: Don't ask the counsel questions, please. Just answer the questions as well as you can. Suppose you begin again, Mr. Crockett.

Q. (By Mr. Crockett): My question, Mr. Kawano, is simply who gave you the understanding?

(Testimony of Jack Kawano.)

Was it any of the prosecuting officers of the Territory, or did you pick it up from the street?

A. I think I picked it up in the newspaper.

Q. You got it from the newspaper?

A. Yes.

Mr. Crockett: That's all, if the Court please.

Mrs. Bouslog: That's all.

Judge Harris: I would like to ask counsel or this witness whether anyone has ever been sentenced under this particular act, and if so the duration of the penalty meted out. The mention of 20 years with continuity throughout this record generates a little confusion in my mind.

Mr. Crockett: Might I explain our laws provide that in every case that a maximum sentence is imposed by the Court, [200] but after the maximum is imposed why a minimum is then set by a board of prison officials, the Parole and Pardons Board, and that minimum is then referred back to the Court for its approval. To my knowledge, no person has ever been sentenced to serve 20 years in any case under this statute.

Judge Harris: Do I understand the answer to my question is that if John Doe or Mary Roe be found guilty under the statute that it is mandatory upon the part of the Court to mete out a maximum sentence, to wit 20 years, to the defendant?

Mr. Crockett: If the Court is going to impose imprisonment, it would be mandatory to fix a maximum of 20 years.

(Testimony of Jack Kawano.)

Judge Harris: Or the Court could suspend the sentence and grant probation and in addition impose a fine?

Mr. Crockett: The recent session of the Legislature provided that a fine could be imposed. It automatically made the sentence to be a fine.

Judge Harris: Did the last Legislature have anything to do with the amendment of this particular act with respect to punishment?

Mr. Crockett: With respect to punishment, yes, but not with respect to the unlawful assembly law.

Judge Harris: As to the main fabric of the act, the contents of the act, no amendments were made thereto?

Mr. Crockett: As I recall, the last session of the Legislature made the provision that if a statute provided only imprisonment that the Court had the option of automatically giving him imprisonment or a fine. Prior to that there was some statute which said "Fine or imprisonment." There were others which said "Only imprisonment." There were some which said "Only a fine," but the Legislature passed an act so that the Court in every case of a conviction of a felony has the option to impose imprisonment or a fine. That was made a part of the general law, and that is the condition today. So the Court has three options, of imposing imprisonment, or imposing a fine,—I should not say three. They can impose imprisonment plus fine, or they can suspend imposition of sentence, or they can impose

(Testimony of Jack Kawano.)

sentence and suspend the execution of the sentence. So that the Court has the widest possible latitude. Coming back to the question which the Court asked, to my knowledge, no person has ever been given a maximum of 20 years under the Riot Statute.

Judge Harris: What has been the minimum overall average of sentences meted out by Courts?

Mr. Crockett: I can't say, if the Court please. We have had only one case in our circuit, and there is one case in the Kauai circuit.

Judge Harris: Did they arise out of labor disputes, or general run of the mill?

Mr. Crockett: Labor disputes, I believe. [202]

Judge Harris: What were the sentences?

Mr. Crockett: The one which arose in our circuit was about 20 years ago, and although I was counsel in that case, I don't recall. It was relatively small. At that time I think the law provided only a maximum of five years.

Judge Biggs: Pardon me. You are through with this witness?

Mrs. Bouslog: Yes.

(The witness was excused.)

Judge Biggs: Let's get the matter quite straight. I am not clear myself. I think it might be well if some sort of memorandum were submitted in respect to it at counsel's convenience.

Mr. Crockett: I can check up on the amount of the penalties.

Judge Biggs: These sentences imposed or

whether there were any imposed are matters of public record. Your next witness, please, Mrs. Bouslog.

Mrs. Bouslog: I will call Mr. Cockett, Clerk of the Second Judicial Circuit.

Judge Biggs: Will you be sworn, please?

JOHN B. COCKETT

called as a witness by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows: [203]

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please?

A. My name is John B. Cockett, and my position is Clerk of the Second Circuit Court of the Territory of Hawaii.

Q. Mr. Cockett, I show you a red manila envelope marked "Criminal 2412 and 2413, Prosecution's Exhibits A to D." Will you examine that and say whether those are the exhibits in the grand jury challenge case? A. They are.

Miss Lewis: If the Court please, so we won't have any undue interruptions, I would like to have the same general objections to all of the grand jury record and testimony that I filed for the opening of the trial.

Judge Biggs: Very well, we will consider your objection as renewed and going to this entire line of testimony.

(Testimony of John B. Cockett.)

Miss Lewis: Then if there are other objections, we will consider them as additional objections.

Judge Biggs: Very well, you may make them as we go along. Objection overruled, subject to motion to strike.

Q. (By Mrs. Bouslog): I have another envelope marked "Movant's Exhibits 1 to 21." Is that to your knowledge, the exhibits in these cases?

A. That is correct.

Q. (By Judge Biggs): I take it you have inspected these. [204] Mrs. Bouslog has submitted these to you prior to your taking the stand?

A. Yes, I have had them in my possession.

Mrs. Bouslog: He was subpoenaed, your Honor, and brought them with him.

Q. (By Mrs. Bouslog): So that these are to your knowledge the exhibits filed in these cases?

A. That is correct.

Mrs. Bouslog: Your Honor, we are faced with,——

Judge Biggs: Yes, a dilemma as to how you are going to put these records in since they are records of another Court.

Mrs. Bouslog: Here is what counsel for the Plaintiffs has in mind. Some of the exhibits we will in the presentation of our case on the grand jury matter refer to the exhibits in this case. Where the Court already has copies of exhibits, we call the Court's attention to those copies. Some of them are attached to the bill of particulars. Where the

(Testimony of John B. Cockett.)

Court does not have a copy and where we believe it is necessary for the Court to have an understanding, we will offer this and substitute copies so that this Court may have a complete record.

Judge Biggs: Counsel has no objection to the substitution of copies?

Mr. Crockett: No, we haven't. [205]

Judge Biggs: You may reserve your objection as to pertinency.

Miss Lewis: I don't know that I fully understand it, because we have the same problem. We will want to do the same.

Judge Biggs: We have no right to keep the records of another Court.

Miss Lewis: The thing that will come up is that we will have a similar problem. What will be substituted, just as much as the Court feels is necessary for its consideration?

Judge Biggs: The Court is going to have difficulty deciding that at this time. I suppose the matter will have to rest pretty largely in the discretion of counsel and the Court, and we will have to pass on these things as they arise individually.

Miss Lewis: Very well.

Mrs. Bouslog: I have not yet offered these exhibits. What I intend to do is to offer those which the Plaintiffs wish to have in for the consideration of the Court in the case.

Judge Biggs: And you will substitute copies for those?

(Testimony of John B. Cockett.)

Mrs. Bouslog: Yes.

Judge Biggs: Why don't you have the folders marked for identification only? That will help. [206]

Q. (By Mrs. Bouslog): I believe that I did not refer to a document marked Court's Exhibit 1 and 2. That also is from the criminal records?

A. That is correct, in connection with the two criminal records referred to.

Mrs. Bouslog: So we have three envelopes to mark for identification, Movant's Exhibits, Prosecution's Exhibits and Court's Exhibits.

Judge Biggs: I think they might well be marked for identification. 14 is the next number; 14, 15 and 16 for identification.

(Thereupon, the documents referred to were marked Plaintiff's Exhibits Nos. 14, 15 and 16 for Identification.)

(See Court's Exhibit 1, set out on pages 1794 to 1813 and Court's Exhibit 2, set out on pages 1814 to 1833.)

Mrs. Bouslog: They I will want to take them back from the Clerk.

Judge Biggs: Yes, they are only being marked for identification.

Mr. Crockett: At this time, although we intend to call Mr. Cockett later, we have a report of the jury commissioners of persons selected to serve as jurors in and for the Second Circuit, Territory of Hawaii, for the year A.D. 1948, which is certified by the Deputy Clerk of the Court as being a true

(Testimony of John B. Cockett.)

copy of the original. We ask that we be allowed to offer it in evidence.

Judge Biggs: Any objection? [207]

Mrs. Bouslog: Yes, I have, your Honor. I see no relevancy.

Judge Biggs: Do you have any objection to its being offered out of order, reserving your objection as to relevancy?

Mrs. Bouslog: I would suggest that I object to it being offered out of order at this time, your Honor.

Mr. Crockett: The reason I offered it at this time, if the Court please, it is a matter on which we will question Mr. Cockett in connection with other cases, and this probably belongs at this phase of the case.

Judge Biggs: The Court is allowed very wide latitude here in respect to offering exhibits out of order, and we think it would facilitate the proceedings if we receive this now. We overrule the objection as to its being out of order and the objection in respect to relevancy, reserving, however, your usual motion to strike. That will be marked Defendant's Exhibit "D."

(Thereupon, the document referred to was marked Defendants' Exhibit "D" and received in evidence.)

(See Court's Exhibit 1, set out on pages 1794 to 1813 and Court's Exhibit 2, set out on pages 1814 to 1833.)

(Testimony of John B. Cockett.)

Cross-Examination

By Mr. Crockett:

Q. Mr. Cockett, referring to page one of the grand jury,—

Mrs. Bouslog: Your Honor, I object,—

Judge Biggs: Let Mr. Crockett complete his question.

Q. Referring to page one of the list of grand jurors and [208] the name with the number 15 in front of it, Philip P. Gamponia, do you know Mr. Gamponia personally?

Judge Biggs: Don't answer the question, please, until Mrs. Bouslog has had opportunity to state her objections.

Mrs. Bouslog: I object to this as not proper cross-examination, your Honor.

Judge Biggs: I didn't understand you were treating this as cross-examination.

Mr. Crockett: No, it isn't cross-examination, if the Court please. This matter that I wish to question Mr. Cockett on refers to this particular phase of the case, and I thought it would facilitate matters.

Judge Biggs: You are making him your witness for that purpose?

Mr. Crockett: Yes.

Judge Biggs: Any objection to that, Mrs. Bouslog?

Mrs. Bouslog: Yes, he said he was going to call him later. I think it will be more,—

(Testimony of John B. Cockett.)

Mr. Crockett: I will withdraw the question.

Judge Biggs: Very well.

Mr. Crockett: No cross-examination then.

Judge Biggs: I think I should point out, Mrs. Bouslog, that we do expect the utmost degree of cooperation in this. We have no jury present. If we had a jury present we would have to adhere very strictly to the rules and make clear-cut [209] rulings as we go along. This is a much more convenient course both for counsel and the court. Proceed.

Mrs. Bouslog: I have no further questions of Mr. Cockett, unless the Court has some.

Judge Biggs: We have none.

(The witness was excused.)

Mrs. Bouslog: I will call Dr. John Reinecke.

Judge Biggs: How long will his testimony take, please?

Mrs. Bouslog: I think, your Honor, it may take about an hour or more.

Judge Biggs: Then I think we will take our recess. The Court will stand in recess for five minutes.

(Recess.)

DR. JOHN E. REINECKE

called as a witness by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please?

A. John E. Reinecke, R-e-i-n-e-c-k-e.

Q. Where do you live, Mr. Reinecke?

A. At 1555 Piikoi Street, Honolulu.

Q. Will you state what your educational background has been?

A. I have a bachelor's degree, an M.A. from the University [210] of Hawaii, Ph.D. from Yale University.

Q. What was your doctor's work taken in?

A. In the field of race relations.

Q. What was your thesis?

A. It was on the sociology of language.

Q. How long have you lived in the Territory of Hawaii?

A. I have maintained my residence here for 21½ years. I have been outside of the Territory about three of those years.

Q. Were those the years you were taking your doctor's degree? A. And studying elsewhere.

Q. During the course of time you have lived in the Territory, what has been your employment?

A. I have been a teacher in the public schools and at the University of Hawaii for seventeen years of my residence here.

(Testimony of Dr. John E. Reinecke.)

Q. During the course of your experience as a school teacher, have you had occasion to observe and study the practices and habits, the ethnic cultures of the islands? A. I have had, yes.

Mrs. Bouslog: If the Court please, Dr. Reinecke's qualifications are set forth in the transcript at pages seven to eight. Unless the Court particularly desires more details as to his qualifications as an expert, we will refer to the pages in the transcript.

Judge Biggs: What is your offer of proof? [211]

Mrs. Bouslog: I am trying to qualify Dr. Reinecke as an expert in race relations in the Territory and in the Ethnic cultures in the Territory.

Judge Biggs: You propose to have him testify respecting those?

Mrs. Bouslog: That is correct, your Honor.

Judge Biggs: In relation to the present case?

Mrs. Bouslog: Yes, and I might say, your Honor that it is not counsel's intention to repeat any of the things that are already in the record. These are matters which were excluded at the time or have since been worked out.

Judge Biggs: It may save time, although the Attorney General is not required to admit qualification at this point. Perhaps it would save time, Mr. Crockett and Miss Lewis, if you indicate the doctor is qualified to testify in respect to ethnic cultures and race relations in the Territory.

Mr. Crockett: We have no objection subject to what we may develop on cross-examination, to per-

(Testimony of Dr. John E. Reinecke.)

haps bring out particular points regarding matters which he may testify to.

Judge Biggs: The Court feels he is sufficiently qualified.

Mrs. Bouslog: I would like the record to note that we would like incorporated at this point what is already stipulated in the record at page seven to eight in regard to particular writings, particular studies that he has made in the [212] past which have been published.

Judge Biggs: That is stipulated into the record?

Mrs. Bouslog: Yes.

Q. (By Mrs. Bouslog): Dr. Reinecke, is there any special custom or practice in Hawaii regarding the ethnic classifications which cuts across the customary anthropological Caucasian and non-Caucasian classifications?

A. There is. In Hawaii I distinguish not on strictly racial lines so much as on lines of national derivation, and it appears that because of the history of Hawaii, the people who are racially Caucasian are divided into two main groups, the haoles, and the Portuguese, Spanish and the white section of the Porto Ricans on the other hand. Until 1940 the census reports broke down the Caucasian population into Portuguese, Spanish, Porto Ricans and other Caucasians, the majority of the other Caucasians being haoles.

Q. Will you define the term "haole" as it is generally accepted in the islands?

(Testimony of Dr. John E. Reinecke.)

A. "Haole" in general means a person of mainland America or of northern European stock. In other words, not a person of Portuguese, Spanish or Porto Rican descent.

Q. (By Judge Biggs): What is the derivation of the word "haole," Doctor? What does it mean in Hawaiian?

A. Originally it meant simply foreigner, but it has acquired this particular meaning. [213]

Q. In other words, it meant originally foreigner, but has acquired a gloss which you have explained?

A. That is true, and the way in which it acquired this gloss is set forth by Romanzo Adams, late professor of sociology of the University of Hawaii, and perhaps the leading expert in his day on racial questions in Hawaii, in his book "Inter-Racial Marriage in Hawaii," published in 1937, pages 114 to 116 and 119. I have excerpted the material, but I think that I have given the gist of it in my testimony already.

Mrs. Bouslog: May I have the excerpt that you have made, Dr. Reinecke? For the convenience of the Court, I will offer that excerpt from Romanzo Adams' "Inter-Racial Marriage in Hawaii," which describes the derivation of the word "haole" and the gloss it has acquired through custom or practice in the Territory.

Judge Biggs: Any objection?

Mr. Crockett: No objection.

Judge Biggs: Admitted as Plaintiff's Exhibit 17.

(Testimony of Dr. John E. Reinecke.)

(Thereupon, the document referred to was marked Plaintiffs' Exhibit No. 17 and was received in evidence.)

PLAINTIFF'S EXHIBIT NO. 17

Romanzo Adams. *Interracial Marriage in Hawaii; A Study of the Mutually Conditioned Processes of Acculturation and Amalgamation.* New York: The Macmillan Company, 1937.

"In continental United States the people of the white race take themselves for granted and they classify the others and assign them their place in the social order. They are able to ignore any point of view different from their own. In Hawaii the white people were, for a long time, so few that the Hawaiians, who took themselves for granted, named and placed the other peoples. Of course they had to place [114] the British and Americans near the top, but the name, *haole*, was Hawaiian and it is best understood from the standpoint of Hawaiian experience. It has been necessary, therefore, in Hawaii for white people to see themselves somewhat as Hawaiians see them. They have accepted the Hawaiian designation, *haole*, and, of course, it has affected their conception of their role and their behavior.

The word, *haole*, in the beginning meant stranger or outsider. It did not, at first, refer to color, but since nearly all of the early strangers were white

(Testimony of Dr. John E. Reinecke.)

men it came to be applied in its unmodified form only to white people. . . .

. . . When white men, mainly British and American, came to be somewhat numerous they occupied most of the important professional positions and they were the executives and administrators, the owners of property and the initiators of policy. Of course there were many who occupied positions of minor importance, but even they were better paid than others and the way was more open to them for promotion. Thus the word came gradually to stand for a class of superior economic and social status . . . it is reasonable to assume that the term, *haole*, was, for a long time, more significant of rank than of race. But as Hawaiians and part-Hawaiians in the more recent times have been learning to speak the English language and, with it, taking over other elements of American [115] and European culture, they are more or less coming to think in terms of race.

It must be emphasized that the term, *haole*, acquired its meaning from Hawaiian experience and attitudes and that its use has become current among all the other peoples because it stands for something they feel to be unique in the position of this group. As a local classificatory term its meaning is maintained not so much by the *haole* as by the others. When some of the German plantation laborers won a better economic status the decision whether they were to be regarded as *haole* lay in part with the

(Testimony of Dr. John E. Reinecke.)

haole who might or might not give them social recognition, but more largely with the Hawaiians and others who might or might not be willing to treat them as haole.” [116]

“Among the European immigrants of the nineteenth century the Portuguese were unique in relation to the status achieved. Coming mainly as plantation laborers they did not as promptly improve their status as did the Germans and Norwegians. The Portuguese were much more numerous. Mainly they were illiterate and for a generation they were indifferent to schooling. In general culture they differed more from the haole than did most of the other European immigrants. Because they were numerous and because their status was a humble one for a long time, there came to be a pretty definite mental set in relation to them. That is, they were regarded as a separate people, the ‘Portegees.’ ”

Admitted. [119]

Mrs. Bouslog: Again, your Honor, I will make sufficient copies for the members of the Court at a later time.

The Witness: Resuming my answer to your question, Mrs. Bouslog, I may say that in the rural counties the distinction between haole and Portuguese,—the Spanish, by the [214] way, are very few in numbers,—The distinction between haole and

(Testimony of Dr. John E. Reinecke.)

Portuguese is much more sharply drawn than it is in Honolulu.

Q. (By Mrs. Bouslog): What is the reason for that?

A. It is that the haoles have occupied the leading positions in industry and the professions, while the Portuguese, coming as plantation laborers and having apparent cultures, were much slower in becoming acculturated and being able to take full advantage of the educational and occupational opportunities in the islands, so that they have both regarded themselves and have been regarded as essentially laboring class people. In other words, haole is as much a term of class distinction as it is a term of ethnic distinction, and that attitude comes out rather distinctly in a remark which Mr. Pombo, the jury commissioner, made in the course of his examination. I was going over the transcript and was struck by his remarks.

Judge Biggs: That record is here by stipulation, am I correct?

Mrs. Bouslog: That is correct. I think, if the Court please, Dr. Reinecke is using this particular reference he is making to the transcript as proof of a conclusion that he has drawn that it has economic significance, as well as,—

Judge Biggs: Very well.

A. (Continuing): Mr. Pombo, in the course of his testimony, said, "No, I don't consider a Portuguese a white man. They [215] consider us as

(Testimony of Dr. John E. Reinecke.)

niggers here. We are not classed as white men. They do not even class us as Caucasians, and I told you that yesterday and I would like to have that included that Portuguese are not called Caucasian." Then counsel asked, "Don't you consider yourself?" "I might, but I was taught when a boy that I am not a Caucasian, I was a Portuguese, and I am going to stick to it, and I am proud of it."

Q. What is the page number of that?

A. That page is 340, and again on page 267 Mr. Pombo was asked, "What do you mean white persons?"

Mr. Crockett: If the Court please, might I interrupt the witness. All this reference to Pombo is certainly not material to the issues of this case.

Judge Biggs: We are not certain that it is material, but we think it is largely preliminary.

Mrs. Bouslog: That's right, your Honor.

Judge Biggs: We will overrule the objection.

Mrs. Bouslog: Mr. Pombo is a jury commissioner.

Judge Biggs: It is subject to motion to strike. We might say in regard to any question respecting a motion to strike, the Court of course reserves to itself the right to strike any testimony which we deem immaterial. Will you answer the question?

A. Mr. Pombo was asked, "What do you mean white persons?" I beg your pardon, he was answering. He said, "What do you [216] mean white persons? Portuguese is not considered white in

(Testimony of Dr. John E. Reinecke.)

Hawaii." Then he was asked, "Portuguese are not considered white in Hawaii?" "Yes, I am not considered white. I am classed with the Hawaiians and the part Hawaiians and the Chinese and am perfectly satisfied." Then he was asked, "Do you consider yourself white?" "Yes, but the haoles here don't." That gives the attitude of one of the leading Portuguese citizens of Maui County regarding his own ethnic position in the community, and I believe that one has to take into consideration the difference drawn socially between haoles and Portuguese and Spaniard in the community.

Q. (By Judge Biggs): When you say "socially" you mean the word in its broader sense, sociologically, do you not?

A. I do, yes, I do. Then there is another distinction which I should like to make. Here in Hawaii all people having any Hawaiian ancestry whatever are called "part Hawaiians" unless they choose to call themselves "full-blooded Hawaiians." Naturally the part Hawaiian group which appears in the census contains people who are predominantly of Hawaiian blood and who follow a number of the old Hawaiian customs. It also includes people who are indistinguishable biologically and socially from the haoles or the Portuguese or the Chinese, and it includes a number of people, of course, in between. Now a certain number of the people of Caucasian-Hawaiian blood and particularly of haole-Hawaiian blood occupy positions [217] in the

(Testimony of Dr. John E. Reinecke.)

community which are hardly distinguishable from those occupied by the haoles. They are on the next step below the haoles socially and economically. Then there are a number, as I said, who are two or three steps down. I think that these facts have to be taken into consideration in fully understanding the tables that were presented.

Q. (By Mrs. Bouslog): Is there any particular explanation of a Caucasian-Hawaiian as distinguished from some of the other racial combinations with persons of Hawaiian blood?

Mr. Crockett: If the Court please, may I object to the question as wholly immaterial, because the only question that was raised here was that there was discrimination against the Filipinos. It seems to me it is immaterial, although it is interesting, but it is immaterial as to how the Caucasian-Hawaiians fit into the picture here or how the Portuguese fit into the picture, because there is only one issue here, and that is whether or not Filipinos were discriminated against and whether or not that discrimination can be shown, so I submit why waste the time of going into this interesting discussion, this ethnological discussion which Dr. Reinecke is very well qualified to discuss?

Judge Biggs: Mr. Crockett, I think you must view this from the point of view of two of the judges who are from the mainland and who are strangers here. I am not at all certain that even if the counsel for the Plaintiffs were to admit [218]

(Testimony of Dr. John E. Reinecke.)

that claim as to discrimination went only to the members of the Filipino race that we could deal with this subject without the background. Now, we will try to restrict it as far as possible, but I think we had better go ahead along this line even if it wastes time and even if it is immaterial.

A. Mrs. Bouslog, I have not quite finished answering the question. There is one more point which I should like to make. In the census reports of 1910, I believe, certainly of 1920 and 1930, all the Caucasians who were not included as Portuguese, Spaniards or Porto Ricans were called "Other Caucasians." Now, as I mentioned in passing "Other Caucasians" is not quite synonymous with haole because a person, who for example, had an English father and a Portuguese mother, or a Portuguese father and a Spanish mother, might be called "Other Caucasian." Now, incidentally, if a person who is of north European and Portuguese mixed ancestry, a person of mixed ancestry north European and Portuguese, may be classed socially as a haole or as a Portuguese, depending on his family circumstances.

Q. I was asking particularly about Caucasian-Hawaiians, whether or not sometimes their classification cuts across the haole, non-haole axis of ethnic classification in the islands.

A. To a certain extent it does. That is, a small number of Caucasian-Hawaiians are not regarded as ordinary Hawaiians by the majority of the popu-

(Testimony of Dr. John E. Reinecke.)

lation. They may be subject to a [219] slight discrimination on the part of haoles of unmixed blood.

Q. (By Judge Biggs): When you say "Caucasian-Hawaiian" do you mean a person of pure Caucasian blood who has been born in Hawaii?

A. No, your Honor.

Q. You mean a person who has a Caucasian mother and a Hawaiian father, or vice versa?

A. Yes, or in most cases much more Caucasian than Hawaiian blood, in the instance to which I am referring.

Judge Biggs: Very well.

A. (Continuing): There are a few cases of individuals who are hardly regarded even as part-Hawaiians by the mass of the population, although haoles who are very snobbish may bear in mind their Hawaiian blood. However, because of the advantages enjoyed by the father usually these people have much better standing in the community and many more economic advantages than the average part-Hawaiian.

Q. (By Mrs. Bouslog): What evidence do you have that haoles, as you have used the term here, actually do occupy superior positions in the Territory and particularly in Maui County?

Mr. Crockett: If the Court please, we would like to ask that that question be made a little more definite. She says, "Occupy more superior positions." There are several fields the witness testified to, the social field, economic and political field, busi-

(Testimony of Dr. John E. Reinecke.)

ness field. The question is indefinite [220] in that respect.

Judge Biggs: I am not quite sure in what sense the witness is using the word "Social." When you say "Social," you mean sociological, do you not? Not whether A is invited to B's party or whether or not A will associate with B, but you really mean it in the economic sense, don't you?

A. I mean it primarily in the economic sense, although of course the invitations to dinner somewhat reflect ones economic position largely.

Judge Biggs: Well, I think the question could be made more definite, Mrs. Bouslog. We will sustain the objection.

Q. (By Mrs. Bouslog): What evidence do you have that the haoles as you have defined the term are engaged in occupations in the community of a more remunerative nature than the non-haoles?

A. I have first the occupational index of Caucasians in general in the Territory. Now it is well known that the majority of haole working men reside on the Island of Oahu, while on the three outlying counties there are relatively few haole working men. This occupational index,—I believe that you have a copy, Mrs. Bouslog,—will show the preferred position occupied by Caucasians in general in 1940. Now Caucasian includes both haole and Portuguese. If the haoles had been distinguished from the Portuguese in the census classifications, the occupational index for professional workers,

(Testimony of Dr. John E. Reinecke.)

semi-professional workers, proprietors, managers and officials, clerical, sales and similar workers, craftsmen, foremen and similar workers, would have been very much higher indeed for the haoles than they are for Caucasians in general. Also, if a similar list could be drawn up for Maui, it would show that the haoles in the County of Maui occupy a very much more advantageous position in general than the haoles in the Territory generally, including Honolulu. Now if one takes the lists of executives on the plantations and in other large businesses or branches of large businesses in Maui County, one finds that invariably the top positions are occupied by haoles. The secondary positions are occupied by haole-Hawaiians, that is people of mixed haole and Hawaiian blood, and in a very few cases by Portuguese. The staff personnel of the sugar plantations on Maui has not changed greatly in the past seven or eight years, and going through Gilmore's Hawaii Sugar Manual for 1938-1939, I find that of the staff personnel who are named.—

Mr. Crockett: Just a minute. May I object to that line of testimony referring to matters in 1938 and 1939 and also the witness's statement that the personnel has not changed greatly in these past years as being a conclusion for which no foundation is laid.

Judge Biggs: You may bring that out on cross-examination. The manual to which the witness refers, is that a [222] standard manual? Do you have a copy of it with you?

(Testimony of Dr. John E. Reinecke.)

The Witness: I have a copy. It is a standard manual.

Q. (By Judge Biggs): Published by whom?

A. By A. B. Gilmore, publisher.

Q. You had a copy?

A. This is the University Library's copy.

Judge Biggs: May we look at it a moment?

(The witness hands document to the Court.)

Judge Biggs: Would you state your objection again, please?

Mr. Crockett: The objection, if the Court please, goes to the fact that the witness is making certain statements there and directly to the effect that there has been no change during the past six or seven years, and thereby trying to connect that up with the Manual published in 1938 or 1939. The Court certainly knows that conditions have materially changed in those years, as the testimony before the Court produced by the plaintiffs themselves show,—to the effect that great changes have been made due to the fact that the unions themselves have come into the picture within the past four or five years, and other changes which the Court will take judicial notice of,—the fact that the conditions here have changed materially, due to the fact that a war was fought, and I submit, if the Court please, that this witness should at least lay a foundation for his conclusion that there have been no changes, since 1938 and 1939, in a period of six years.

Judge Biggs: Is this their last manual?

(Testimony of Dr. John E. Reinecke.)

Witness: It is, your Honor.

Judge Biggs: None has been published since that date?

Witness: No, none has been published since that date. However, I recognize the name of——

Judge Biggs: Just a minute. The Court is of the [224] opinion that the question is one of materiality; it goes only to the weight and it is a matter which may be developed on cross-examination. We overrule the objection, and reserving the motion, as to materiality. Proceed, please.

A. Of the staff personnel on the five plantations, on the island of Maui, the sugar plantations, of the staff personnel who are named, 105 men bear haole names, although a few of those may be of mixed Hawaiian blood.

Q. (By Judge Biggs): Now, Doctor, is that any evidence,—names? In the course of my few days here I have seen maybe a man who seemed to be of pure Hawaiian blood who had a purely Irish name. I have forgotten what it was, but it was a name, with all deference to the islands, that was as Irish as paddy's pig. Can you tell from names? Is that any real test?

A. It is when combined with the position one holds. If I find a man named A. F. Baldwin is manager of Maui Agricultural Company, I am sure that he is a man of unmixed white descent.

(Testimony of Dr. John E. Reinecke.)

Examination

By Judge Biggs:

Q. That is because you know a man named Mr. Baldwin, isn't that it?

A. I don't know him personally.

Q. But you know who it is?

A. I know through the family.

Q. My remarks about the Irish are said with good faith, because I am quarter-blood Irish myself, and nothing invidious [225] can be taken from that, but isn't that a question of it being a case where you actually know the man?

A. One has to know something of the family system of these people's names, and I have looked over the list of executives of the island of Maui, so that I think that I can tell within 5% who are haoles and who are not.

Q. You mean to say your percentage of error would be higher than 5%?

A. I don't think it would be higher than 5%.

Judge Biggs: Very well. Continue.

A. Then 18 have what might be called non-haole names,—Portuguese, Japanese and Chinese.

Q. Now to come up to date, take the annual report of the Maui Agricultural Company, Limited, for 1947, which lists the production staff, and I find that with one exception the department heads, as well as the higher executives, have Caucasian names; that is non-Portuguese Caucasian names. The exception is the warehouse superintendent, who has a Japanese name.

(Testimony of Dr. John E. Reinecke.)

The Pioneer Mill Company's annual reports for 1947 also list the top people, and I find that again without exception everyone is a haole name, though there is one gentleman here who I think is of Hawaiian blood, and while we don't have the annual reports of the other plantations on the island at hand, I believe that they would show the same [226] general picture.

Mr. Crockett: If the Court please, may I ask the witness to let me see the M. A. Company annual report, and the Pioneer Mill.

(Documents handed to counsel.)

Mr. Crockett: Thank you.

Judge Biggs: Mrs. Bouslog, are you going to introduce these documents in evidence?

Mrs. Bouslog: We can if the Court desires us to do so.

Judge Biggs: Do you have any other copy of Gilmore's available.

Mrs. Bouslog: We will procure a copy that does not belong to the libraries.

Judge Biggs: I presume it would be found in most of the large libraries of the United States, would it not,—such as the San Francisco Public Library?

Witness: I think so.

Judge Biggs: These others are pamphlets, and I assume that you can procure other copies of them?

Mrs. Bouslog: Yes, your Honor, I believe the ones we have belong to the union, but I imagine

(Testimony of Dr. John E. Reinecke.)

other copies could be procured for the use of the Court.

Judge Biggs: Are you willing to offer them?

Mrs. Bouslog: Yes, your Honor. [227]

Judge Biggs: I think they should be admitted as one exhibit, and a copy of Gilmore. Do you have a copy of Gilmore, Mr. Crockett?

Witness: Yes, here it is, your Honor.

Judge Biggs: Let the record show that it is the Hawaii Sugar Manual, by A. B. Gilmore, Publisher: A. B. Gilmore, 1939, 1805 Queen and (Gearsen) building, New Orleans, Louisiana. I assume that counsel would have no objections to treat this as being introduced in evidence, even though the book is not physically present, and the Court would have the right to inform itself from the volume, procured from any standard library in the United States.

Mr. Crockett: No objection, if the Court please.

Judge Biggs: We will have them all marked as one exhibit number. They can be marked now, and then taken back. Everything will be marked with one exhibit. Perhaps the University might object to having the exhibit number on here. They have a University number. Are there any other documents there?

Mrs. Bouslog: Yes. Before we leave this:

Q. Dr. Reinecke, you refer to an occupational index by race for the Territory of Hawaii for 1940, and I believe the defendants have a copy of it. It

(Testimony of Dr. John E. Reinecke.)

was marked for identification in the case before Judge Cristy, but not received in evidence.

Mrs. Bouslog: I also offer that, and ask to [228] add that to the exhibits, as being part of the basis of the testimony of this witness.

I will also call the Court's attention that table 3, already in evidence, shows for Maui County, of the Territory, that shows for Maui County the distribution of percentages of population for all groups such as professional workers, semi-professional workers, clericals, and so forth. That table, your Honor, is attached to the bill-of-particulars and is marked Movant's Exhibit Number 7 in evidence,—Table 3.

Judge Biggs: Any objection, except on the ground of relevancy, to it being so marked?

Mr. Crockett: That is all, if the Court please.

Judge Biggs: Very well. The objection is overruled. The next number is 18, and I would suggest they all be marked. I would put them all in a folder and marked on the folder, as Exhibit 18. It will save marking the book, which can be returned by the witness.

What is that Lahaina annual called?

Mr. Crockett: They are the Maui Agricultural Company, and the Pioneer Mill Company's annual reports.

(Various documents referred to as above, are received, placed in an envelope, and the envelope is marked: "Plaintiffs' Exhibit Number 18.")

(Testimony of Dr. John E. Reinecke.)

PLAINTIFF'S EXHIBIT NO. 18

Here's Your Annual Report, Maui Agricultural Company, Ltd. 1947.

What Made the Harvest of 1947

Labor

One of the outstanding contributions to the harvest of 1947 was the desire of everyone to do a job. Workers and management worked together as a team.

Problems arose, of course, from the conversion of perquisites into wages. Both workers and management expected these but neither of us realized how difficult they would be. Perquisites—housing and medical service—had been a custom since the founding of the industry.

The change was a major one in the life of the community.

The theory of the new system is this: The worker receives his full pay in money wages. He does not receive part of it in money and part of it in housing and medical services as he did under the perquisite system. He pays rent, and a monthly fee for himself and his family.

We—management and workers—were anxious to give our people an increased feeling of independence.

But the sudden change was hard to absorb. New values were created. Old values were destroyed. To management it meant additional costs and book-

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

keeping. To older workers, and workers with large families, it meant a difficult economic adjustment.

The conversion is not yet complete. In the interests of our workers and the community, the plantation has found that it must still help to pay for housing and medical services. This is beyond what the worker pays in rent and medical fees.

Nevertheless, we have worked together with friendliness to accomplish this major readjustment.

* * *

The relationship between the worker and his immediate supervisor received top consideration in our Industrial Relations program during the year.

Discussion groups with supervisors were held to talk over problems and to work out ways to handle on-the-job personnel matters. Top management and the supervisory force worked closely to enable the supervisor to do a better job of carrying out the policies of the company.

* * *

Enactment of the Taft-Hartley Act required no changes in the policies of our company and had no effect on our good labor relations.

Weather

Rainfall, although not plentiful, was well distributed over our lands. This, coupled with improved irrigation methods, kept crops in good condition.

During the year 31,946 million gallons of water came by ditch from the East Maui watershed, and 8,980 million gallons were pumped.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Trucking

Trucks began to replace cane cars in our fields for hauling cane to centrally located transfer stations. There the cane was dumped into "Main Line" railroad cars and pulled to the mill. Twenty-four per cent of the cane harvested was hauled by truck.

The speed and ease of truck operation resulted in a decision to truck all cane in 1948.

Weed Control

Numerous tests to kill weeds before they grew were carried out during the year. In the past, weeds had been killed after they sprouted. In 1947, however, a plant hormone was found to be effective even on clean fields. Weeds, especially hard grasses, were killed before they came out of the ground.

Dusting this new chemical on crops by airplane was tried successfully. More research on airplane spraying will be done in 1948.

Consolidation

The Directors of our company decided in September, 1947, to recommend to stockholders, a consolidation with the Hawaiian Commercial and Sugar Company, Ltd. The consolidation, which is expected to become effective in March, 1948, if approved, will create the largest single cane producing unit in the United States and incorporated territories.

Future Crops

Bigger yield for next four years if 1947 teamwork continues.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Nineteen forty-seven set the pace for greater M. A. Co. production in the future. Our sights are trained on a goal in 1951 of 53,400 tons of sugar. That's our plantation's share of the 1,052,000 ton allocation under the Federal Sugar Act of 1948. Although the 1948 crop was hard hit by the 1946 strike, production is estimated at a little more than this year's yield.

In 1949, however, we expect to jump ten thousand tons to an estimated 46,000. The following year, 1950, we anticipate our production will be up to 51,000 tons. The banner year will be 1951 when production is expected to reach 53,400 tons of sugar.

The 1951 goal can be met with continued 1947 teamwork. Prospects are excellent. New cane varieties have been developed. New planting and weeding techniques have been adopted. Irrigation has been improved. Labor relations have been good.

Here are estimates of future yields:

	1948	1949	1950	1951
Total acres	3,694	4,222	4,300	4,469
Plant	2,198	1,767	1,891	1,592
Ratoon	1,496	2,455	2,409	2,877
Tons cane	288,038	379,177	390,902	430,989
Tons sugar 96°	36,887	46,445	51,611	53,639
	1948	1949	1950	1951
T/C/A	77.98	89.80	90.89	96.42
T/S/A	9.985	11.00	12.00	12.00
T/C/TS	7.808	8.164	7.574	8.035
Average age mo.	22.00	24.00	24.00	24.00
TS/A/M .....	.454	.458	.500	.500

Our share of Hawaii's sugar allotment is 53,400 tons. We estimate the goal will be met in 1951.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Although the 1948 crop was hard hit by the 1946 strike, a good yield is expected. All crops are now in fine shape, particularly the 1949 crop.

MAUI AGRICULTURAL COMPANY, LTD.

A director and officer of M. A. Co. is R. G. Bell. Mr. Bell, who is a vice-president of our company, is general manager of Alexander and Baldwin, agent for the plantation.

Directors: A. F. Baldwin, F. F. Baldwin, R. B. Bell, E. Brenner, Jr., J. W. Cameron, J. P. Cooke, J. F. Morgan, J. T. Waterhouse, C. B. Wightman.

Officers: A. F. Baldwin, Pres.; J. P. Cooke, Vice-Pres.; R. G. Bell, Vice-Pres.; B. C. Wightman, Vice-Pres.; J. F. Morgan, Treas.; J. T. Waterhouse, Sec.; A. H. Gorie, Asst. Treas.; F. E. Steere, Jr., Asst. Treas.; D. L. Oleson, Asst. Sec.

Manager: Asa F. Baldwin.

Charles R. Hemenway and William Pullar died during year (directors).

MAUI AGRICULTURAL COMPANY, LTD.

Production Staff

A. F. Baldwin, Manager	F. C. Churchill, Assistant Manager
	Field
W. L. Doty.....	Field Superintendent, Harvesting & Machinery
A. D. Waterhouse.....	Field Superintendent,
	Irrigation & Agricultural Control
A. D. Woolaway....	Field Superintendent, Cultivation & Planting
W. P. Burns.....	Irrigation Overseer

Overseers

L. De Cambra.....	Hamakuapoko Division
W. L. Roach.....	Paia Division
W. A. Bates.....	Keahua Division
A. Fernandez, Acting.....	Pulehu Division

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Production Staff (Continued)

M. Souza	Harvesting Field
L. Ferreira	Planting Field
G. Coleman.....	Field Mechanical Equipment

Supervisors

P. Gonsalves	Water Foreman
J. Arakawa	Water Foreman
A. C. Ferreira	Water Foreman
T. Endo	Water Foreman
S. Okuda	Water Foreman
A. Shishido	Water Foreman
S. Takahashi	Water Foreman
J. Alexander	Water Foreman
John Abreu	Cultivation Supervisor
H. Borge	Cultivation Supervisor
J. Medeiros	Cultivation Supervisor
M. Lopes	Cultivation Supervisor
A. Camara	Cultivation Supervisor
K. Takahashi	Cultivation Supervisor
S. Ishikawa	Cultivation Supervisor
H. Yamada	Cultivation Supervisor
A. Tavares	Cultivation Supervisor
R. Araula	Cultivation Supervisor
L. Eaton	Cultivation Supervisor
J. Lopes	Cultivation Supervisor
J. C. Medeiros.....	Cultivation Supervisor
M. Rabara	Cultivation Supervisor
M. Nako	Cultivation Supervisor
M. Inouye	Cultivation Supervisor
T. Takahashi	Cultivation Supervisor
M. Fernandez	Cultivation Supervisor
H. Abreu	Cultivation Supervisor
C. Byrd	Cultivation Supervisor
P. Cooper.....	Cultivation Supervisor
J. R. Abreu.....	Cultivation Supervisor
L. Paresa	Cultivation Supervisor
I. Nogami	Cultivation Supervisor
M. Ortiz	Seed Cutting Supervisor
R. Kobayashi	Plant Field Supervisor
T. Kokubun	Plant Field Supervisor
M. Tanimoto	Plant Field Supervisor
M. Takaki	Fertilizing Supervisor
D. Oshiro	Agricultural Control Supervisor
M. Vierra	Harvesting Field Supervisor
A. Medeiros	Harvesting Field Supervisor
E. Medeiros	Harvesting Field Supervisor
M. Cabos	Harvesting Field Supervisor

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Production Staff (Continued)

R. Takasugi	Head Irrigation Ditchman
A. Jardine	Rake Harvest Supervisor
M. Boteilho	Mechanical Weeding Supervisor
Y. Nishimura	Cane Loading Supervisor
L. Silva	Tractor Maintenance Shop Supervisor

Factory

J. P. Foster.....	Factory Superintendent
F. G. Manary.....	Mill Engineer
A. A. Kruse.....	Chemist and Processing Superintendent
George Melancon	Sugar Boiler
R. Bradley	Electrical Superintendent, Power & Pumps

Assistants (Factory)

S. A. Sniffen.....	Machine Shop Foreman
H. W. English.....	Repair Garage Foreman
George Nunes	Blacksmith Foreman
H. W. Otte.....	Factory Maintenance & Repair Foreman
A. Pico	Cane Car Repair Foreman
C. G. Trist.....	Pumps Department Foreman
K. Sumida	Assistant Chemist
W. Pico	Lime Kiln Foreman
T. Shishido	Electric

Supervisors (Factory)

A. Coelho	Milling Department Supervisor
H. Nitta	Milling Department Supervisor
T. Yoshimi	Milling Department Supervisor
J. Ambrose	Boiling House Supervisor
A. Amadeo	Boiling House Supervisor
T. Ogawa.....	Boiling House Supervisor

Construction

V. O. Morrison.....	Construction Engineer
M. Cabrinha.....	Building Maintenance Foreman
J. Matsubara.....	Office and Shop Foreman
M. Tanaka	Construction Foreman
Dan Nahaku	Plumbing Shop Foreman
K. Tanimoto	Surveyor

Industrial Relations

R. F. Sheffield.....	Industrial Relations Manager
R. E. Gill	Personnel Director
A. R. Costa.....	Supervisory Relations Director
J. Crouse	Recreation Director
F. Boteilho	Personnel Assistant
W. E. Foster.....	Safety Director

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Production Staff (Continued)

Accounting

L. Bisset	Office Manager
C. W. Gerner.....	Bookkeeper and Cashier
R. S. Gannon.....	Accountant
R. H. St. Sure.....	Payroll Department Head
P. G. Robertson.....	Field Auditor
T. Abe	Maintenance Record Department

Warehouse

E. P. Jijine.....	Warehouse Superintendent
J. Takakura	Warehouse Bookkeeper

Transportation

S. O. Hornbuckle.....	Automotive Maintenance & Repair Superintendent
H. R. Filler.....	Truck and Stable Superintendent
H. K. Scott.....	Locomotive Department Head
E. Citra	Stables Foreman
J. B. Perreira.....	Trucks Foreman
M. Coelho	Locomotive Department Foreman
Y. Takeshita.....	Track Maintenance Supervisor
S. Tsukuda	Track Maintenance Supervisor

Medical

F. A. St. Sure, Jr., M. D.....	Hospital Administrator & Head Physician
J. Sanders, M. D.....	Physician
R. F. Cole, M. D.....	Physician
Mrs. L. Coughlin.....	Supt. of Nurses

Ranch

T. L. Liggett.....	Ranch Manager
S. Abrew	Ranch Foreman

MACo. Stores

A. Moodie	Manager
T. E. Dye.....	Office Manager and Bookkeeper
J. Dolim.....	Keahua Branch Store Manager
D. Shigeta.....	Haliimaile Branch Store Manager
J. V. Medeiros.....	Hamakuapoko Branch Store Manager
H. Matsumoto	Wholesale Department Head
B. J. Ambrose.....	Grocery and Hardware Department Head
J. Perreira.....	Dry Goods Department Head
M. Carreira	Refined Sugar Sales Head
J. Feiteira	Delivery Department Supervisor
H. Morikawa	Men's Furnishings Supervisor
M. Matsumoto	Hardware Department Supervisor
S. Tanaka	Service Station Manager

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Production Staff (Continued)

M. Freitas	Meat Market Manager
H. Tsuji	Assistant Bookkeeper
M. Nakano	Price Accounting
Y. Shoda	Warehouse Supervisor

Factory Division

Lahaina Baldwin Packing Co., Ltd.

1946

1. D. T. Fleming	Manager
2. B. L. Fleming	Superintendent
3. Lowrie	Assistant Superintendent
4. James Bright	Warehouse Superintendent
5. Lawrence T. Sakai	Engineer
6. Francis K. Izumi	Assistant Engineer
7. Shoon Tet Hew	Table Foreman & Personnel
8. Charles Shigihara (Alien)	Purchasing Agent & Supply Room
9. Walter Kozuki	Warehouse and Label Clerk
10. Tom T. Suzuki	Night Shift and Paint Head
11. S. Nakai	Platform Foreman
12. Bob K. Yoschimura	Leading Electrician
13. Kikuji Okada	Cook Room Foreman
14. Yoshito Horiuchi	Beverage Juice Foreman
15. Noboru Horiuchi	Crush Dept. Foreman
16. Tadao Fujiyoshi	Can Testing Foreman
17. Yoshimatsu Yabui (Alien)	Construction Foreman
18. Fred Yoshiharu Yabui	Modified Juice Foreman
19. Miss Kikue Harada	Dispensary Attendant
20. Miss Humiko Yoshimoto	Personnel Dept. Clerk
21. Mrs. Haruyo Yamada	Head Forelady (Sliced)
22. Mrs. Katie Keao	Head Forelady (Trimming)
23. Mrs. Dazon	Forelady
24. Mrs. Emma Kahahane	Forelady
25. Mrs. Teraguchi	Forelady
26. C. W. Ashdown	Office Manager
27. Edwin Bowmer	Cashier
28. Mrs. Evans	Steno. to Manager
29. Mrs. Burns	Head Timekeeper (On Vacation)
30. Mrs. E. Voedroft	Head Timekeeper (Temporary)
31. Miss Teruko Kajihara	Office Clerk
32. Miss D. Lintao	Office Clerk
33. Herbert Eberly	Empty Can Foreman
34. The following Maybe on our side H. T. Kido	Office Statistic
35. Mrs. Elinore Taketa	Asst. Timekeeper

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

The following Lunas are on our side :

36. Haruo Kato (Alien)....Casing, Labeling & Shipping Foreman
 37. Mariano Bangi (Alien).....Warehouse Foreman

Agricultural Division—Honolua

1. RussellField Superintendent
 2. Adam Scott.....Asst. Superintendent & Ind. Rel.
 3. E. S. Burns.....Truck Dept. Superintendent
 4. D. A. Fleming.....Field Mech. Implement Head
 5. Miss Kazuko Mitsui.....Office Clerk
 6. Shuji SekiPersonnel
 7. Seki (Alien)Store Manager
 8. HimoriStore Clerk
 9. IkedaStore Clerk

On the Field Division the list may not be complete as their list have not come in as yet.

ANNUAL REPORT

1947

PIONEER MILL COMPANY, LTD.

Manager's Statement

Water Supply and Weather

Although rainfall on both watershed and field area was considerably less in 1947 than during the year previous, the distribution throughout the year was better. As a result, mountain water ditch flow averaged 47.04 million gallons daily or 1.85 million gallons higher than for 1946. Net use of mountain water was 41.46 mgd, the best since 1943. Unavoidable waste during stormy weather averaged 5.58 mgd. Pumped water requirement was decreased due to better mountain water flow. An average of 32.61 mgd was pumped with net use averaging 23.61 mgd, the lowest figure in many years.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

1947 Crop

This crop, in which harvesting began February 3, 1947, and was completed on October 16, 1947, suffered quite a good deal as a result of the unfortunate strike in 1946 as is shown by the reduction of 4.54 tons of Cane per Acre and the loss of .82 tons of Sugar per Acre in the tabulations below:

	Acres	Tons Cane	T.C.P.A.	Tons Sugar	T.S.P.A.	TC/TS	Age
Plant Cane	857.2	63,360.09	73.92	7,592.14	8.86	8.35	25.32
Long Ratoon ..	3,027.4	209,967.81	69.36	24,932.92	8.24	8.42	25.59
Short Ratoon..	34.0	1,682.61	49.49	178.42	5.25	9.43	16.37
Total	3,918.6	275,010.51	70.18	32,703.48	8.35	8.41	26.22

1948 Crop

The crop average for this year is small due to area lost out of the cycle as result of the 1946 strike. As we noted last year, "time lost in growing crops is gone forever and the inability to maintain field crops will be felt for years to come." When we were forced to stop operations on the 1946 Crop only 2,962.9 acres had been started for the 1948 Crop. However, by juggling areas scheduled for future crops, through short ratooning and short planting, we were able to build up some 400 acres more into the 1948 Crop for a total now to be harvested of 3,363.7 acres. Of this 1,500.1 acres are Plant, 1,718.9 acres are Long Ratoon and 144.7 acres are Short Ratoon. Such practice is not good agriculture but necessary in emergency. Naturally the lack of proper irrigation, extreme weediness and improperly timed fertilization will depress yields. We ex-

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

pect to take off between 31,400 and 32,000 tons of sugar from this crop. Harvest started on January 8, 1948, and good progress was made up to the last week of January when the heaviest rain storm in many years forced us to shut down for a week. This will be the first crop since 1921 with no H-109 Variety in it. The famous old cane has been entirely replaced in this crop by 2,556 acres of 32-5860, 587 acres of 37-1933 and the balance by other canes on trial.

1949 Crop

A total of 3,836 acres scheduled for this crop consists of 606.9 acres of Plant Cane, 60.3 acres of Short Plant, 2,907.1 acres of Long Ratoon and 261.7 acres of Short Ratoon Cane. This area represents the best we could accomplish after readjusting cropping cycles for 1947 and 1948 Crops. Cane for this crop started in 1947 has progressed well and should produce between 35,250 and 36,000 tons of sugar. It is made up of 2,631 acres of 32-8560, 312 acres of 37-1933, 156 acres of 38-2915 and several other varieties on small acreages.

Subsidiaries

The Lahaina Ice Company, Limited expanded its facilities at the beginning of 1947 by the purchase of Pioneer's existing distribution system and now serves all employees. In mid-year it took another big step by divesting itself of the Ice and Cold Storage, Soda Water and Ice Cream business. This brought about the change in its corporate entity

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

and a change in name to Lahaina Light and Power Company, Limited. These steps were entered into after careful and deliberate consideration. As always, the means of best serving the needs of the community were given paramount attention. It is felt that these ends can best be served by the new organization. An agreement was reached with the Baldwin Packers, Limited whereby the company will serve both their Cannery Camps and the Honolulu area as soon as the transmission line can be completed.

General

Our force of adult male, unskilled employees numbered 822 at December 31st. Performance has been steady and turn-out good.

Difficulties in procuring equipment for land clearing were not overcome until after the middle of the year. However, with such equipment as we had, we cleared 503 acres for mechanical field work and harvesting. Of this area, 327 acres were in cane, cleared after harvest, and put back in cane so that only the balance of 176 acres came from previously fallowed area. Discard of additional area during the year brought our net gain of area in cane up 166.9 acres. At the close of the year land in cane was 6,904.5 acres, land in fallow 2,803.3 acres for a total of available cane land of 9,734.8 acres.

Our future hinges on the return to cane of much of the fallowed area in the fastest time possible. We had planned to clear at least 400 acres a year

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18. (Continued)

and have attained that aim. However, with the serious drop in sugar returns we must endeavor to double this rate to 800 acres a year. To this end we are now endeavoring to acquire sufficient, suitable additional equipment. We believe we can accomplish this by June 1st.

High labor and material costs affecting present day operations make it imperative that we increase sugar production by increasing area in cultivation. At Pioneer the land discarded to fallow was so rocky that it had to be operated entirely by manual labor. It was discarded progressively with the loss of hand labor during the war. Now, to put it back in use we must clear it of rocks until it can be prepared, planted and harvested mechanically. Hand labor is not available, and, if available would be excessively costly on a permanent basis. The task is a gigantic one but we now know it can be done with excellent results. The cane growing on the areas already cleared and planted is doing splendidly and will break all records for those fields.

Our concrete pipeline irrigation system is operating well. During the year improved use of potential capacity brought a notable increase in area irrigated per man day. The average for January, 1947, was 6.34 acres per man day. The performance steadily improved to an average for December, 1947, of 9.47 acres per man day and an average for the year of 7.87 acres per man day. This result is most satisfactory. It is of interest to note here that

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

the average man day accomplishment for the year 1934, before any pipeline system was installed, was 1.42 acres.

Formalized Retirement Annuity and Group Life Insurance Plans were offered employees in November. Under the Annuity Plan 90.95 per cent of the 950 employees eligible accepted and under the Group Life Plan 83.06 per cent accepted. Both plans were made effective in December. The plans are insured joint contributory plans.

It is with deep regret that we record the death of Mr. W. H. McInerny, a member of our Board of Directors. His service to the Company was outstanding and will be deeply missed.

Supervisory Staff
As of December 31, 1947
John T. Moir, Jr., Manager
L. M. Van Dreser, Asst. Manager

Agricultural

H. I. Seebart.....	Field Superintendent
C. J. Willett.....	Harvesting Superintendent
W. C. Reichardt.....	Cultivation Overseer
W. K. Buchanan.....	Division Overseer
H. P. Robinson, Jr.....	Division Overseer
J. H. McCarthy.....	Division Overseer
H. D. Wright.....	Division Overseer
K. Sakamoto	Relief Division Overseer
J. Vierra	Field Asst. Agriculturist
H. Aotaki	Foreman, Weed Spray
R. Tanaka	Chief Clerk
T. Watanabe	Spray Gang Luna
T. Ono	Spray Gang Luna
M. Nakamura	Spray Gang Luna
M. De Mello.....	Senior Water Luna
J. De Mello.....	Water Luna
M. Nunes	Water Luna
U. Yamaguchi	Water Luna

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

K. Tamura	Water Luna
K. Ito	Water Luna
J. Kaukau	Water Luna
P. Lasponia	Water Luna
K. Kubo	Water Luna
T. Omura	Water Luna
M. Aotaki	Water Luna
B. Silva	Water Luna
A. Dela Cruz	Field Gang Luna
S. Clarion	Field Gang Luna
J. Arcangel	Field Gang Luna
H. Watanabe	Field Gang Luna
T. Higuchi	Field Gang Luna
E. Balinbin	Field Gang Luna
J. Martin	Field Gang Luna
A. Fujishiro	Field Gang Luna
S. Honda	Field Gang Luna
H. Takahashi	Field Gang Luna
J. Garcia, Sr.	Team Boss
R. Castaneda.....	Clearing Field Boss
G. Andrade	Harvesting Field Boss
H. Omura	Harvesting Field Boss
V. Castillo.....	Harvesting Field Boss
T. Sakamoto	Dairy Overseer
G. Santos	Ranch Overseer
K. Taniguchi	Foreman, Feed Mill

Civil Engineering

C. A. Brown	Consulting Engineer
C. M. Bowen	Civil Engineer
J. A. Swezey	Asst. Civil Engineer
D. Kailiponi	Foreman, Office—Draftsman
J. Greig	Surveyor
T. Yamada	Surveyor
H. Yamamoto	Foreman, Supply
T. Hussey	Foreman, Building Dept.
A. Hussey	Car Repair Foreman

Industrial Relations

E. B. Smith	Manager
J. Rodriques	Welfare Director
K. Kekuewa	Village Personnel Officer
J. Laanui	Village Personnel Officer
J. Cabanilla	Village Personnel Officer
P. Sequeria	Safety Director
T. Hida	Chief Clerk
Mrs. V. Harper	Secretary

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Factory, Pump and Power Stations

G. W. Tompkin.....	Factory, Pump and Power Station Superintendent
A. J. Collins	Chief Chemist
J. Van Landingham	Research Technician
T. Kurita	Shift Sugar Boiler
S. Asami	Shift Sugar Boiler
Y. Morishima	Shift Sugar Boiler
S. Ota	No. 1 Panman
M. Calimpong	No. 1 Panman
T. Mantilla	No. 1 Panman
F. Galam	Foreman, Centrifugal Station
M. Siatres	Foreman, Centrifugal Station
S. Balisco	Foreman, Centrifugal Station
H. Sakamoto	Chemist's Clerk
T. Uemura	Extra Foreman
M. H. Nelson.....	Factory, Pump and Power Station Mechanical Engineer
J. W. Fraser	Milling Dept. Engineer
J. Backlund	Steam Plant Engineer
W. Sanborn	Shift Engineer
A. Gabriel	Shift Engineer
S. Watanabe	Construction Foreman
S. Queniones	Construction Foreman
N. Tokunaga	Steel Shop Foreman
M. Mizomi	Machine Shop Foreman
T. Kodama	Foreman, Utility Gang
J. R. McConkey	Electrical Engineer
E. Sato	Foreman, Power Plant

Service Departments

W. O. Harper	Agricultural Mechanical Supt.
F. Miyabara	Acting Garage Foreman
A. S. Pombo	Tractor Dept. Foreman
T. Miyashita	Asst. Tractor Dept. Foreman
P. De Mello.....	Transportation Dept. Foreman
J. Neddermeyer	Asst. Transportation Dept. Foreman
M. Ito	Section Gang Foreman

Office, Warehouse, Restaurant

S. G. Robertson	Office Manager
W. E. Troy	Asst. Office Manager
A. C. Wong	Jr. Accountant
R. Asato	Asst. Jr. Accountant
M. Kadotani	Credit Manager
W. Soares	Cashier
N. Oda	Head Timekeeper

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

E. Yasuhura	Foreman, Machine Accounting
M. Sodehani	Asst. Foreman, Machine Accounting
J. A. Ah Sing	Warehousekeeper
G. Chung	Asst. Warehousekeeper
F. Lee	Restaurant Overseer
Mrs. E. Willett	Secretary

Plantation Stores

C. W. Brooks	Manager
G. Okahiro	Asst. Manager
S. Omura	Asst. Branch Store Manager
Mrs. D. Soares	Dry Goods Dept. Head
B. Nacua	Grocery and Hardware Dept. Head

Medical

Dr. W. T. Dunn	Physician and Surgeon
Dr. R. C. Dusendschon	Asst. Physician and Surgeon
Miss M. Resor	Head Nurse
Mrs. F. Gay	Registered Nurse
Mrs. F. Berry	Registered Nurse
Mrs. B. Mitchell	Registered Nurse
Miss S. Manmitsu	Dispensary and Surgical Asst.
Miss M. Hirashima	Dispensary and Surgical Asst.
R. Newton	Medical Technician
Mrs. T. Kunishige	Head Cook

Lahaina Light and Power Co., Ltd.

J. R. McConkey	Manager
W. Hattie	Office Manager
K. Tamura	Electrical Foreman
C. Apo	Merchandise Dept. Head

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

OCCUPATIONAL INDEX, BY RACES, TERRITORY OF HAWAII, 1940

Major Occupational Group	Percentage of all employed persons	OCCUPATIONAL INDEX						All Other
		Hawaiian	Part Hawaiian	Caucasian	Chinese	Japanese	Filipino	
Professional workers	61.14%	54	142	254	147	64	7	57
Semi-professional workers	0.91	55	154	198	154	77	22	77
Farmers & Farm managers.....	2.30	113	52	44	57	183	26	70
Proprietors, managers, & officials....	7.45	42	64	211	169	93	12	77
Clerical, sales, & similar workers....	12.11	32	112	159	239	98	15	45
Craftsmen, foremen, & similar workers.....	10.35	95	123	128	76	129	23	83
Operatives, etc.	12.35	168	164	102	107	97	66	129
Domestic service workers.....	5.51	47	65	40	40	189	27	105
Other service workers.....	6.62	139	150	70	169	101	76	127
Farm laborers & foremen.....	24.09	54	30	26	15	69	286	107
Farm laborers (unpaid family workers)	1.79	39	39	17	22	224	11	39
Laborers, unskilled, not on farms....	10.02	298	1555	71	80	87	100	169
Occupation not reported.....	0.37	135	162	108	27	108	54	30

"The index is secured by dividing the portion of the gainfully employed in a given racial group who are employed in a specific occupation by the proportion of the employed population of all races engaged in the same occupation. Thus, an index of 100 indicates that the given race has exactly its expected representation in the particular occupation. An index above or below 100 marks a deviation from the norm, either in the direction of concentrating in or of avoiding a particular field." (Andrew W. Lind, An Island Community, p. 251.)

Indexes are calculated by Dr. John E. Reinecke from occupation data given in the 1940 census.

(Testimony of Dr. John E. Reinecke.)

Mrs. Bouslog: The Maui Agricultural Company is the [229] company where the Paia incident occurred.

Judge Biggs: The folder,—the exhibits therein will include the Gilmore, but the book itself is to be withdrawn, and a copy to be substituted either by counsel or by the Court itself, as may be necessary.

Q. (By Mrs. Bouslog): Dr. Reinecke, in respect to the use of names to determine race, are there certain family names that are common in the Territory that connote something to a person who has been here that would not generally be true?

Judge Biggs: I do not understand the question. Rephrase the question, please.

Q. Are there certain family names, of families who were early settlers in the Territory, that connote to a person familiar with the economic set-up a certain race and social class?

A. Do you mean within the Caucasian race?

Q. The Caucasian. Haole is Caucasian?

A. That's true. There are such names.

Q. Can you give examples?

A. Well, looking over the list, the Baldwins, and Waterhouses are representative of two of the most eminent families here.

Q. What effect does the distinction between haole and non-haole have on the attitude—that is, on the sociological feelings and attitude of the people in Maui county? [230]

(Testimony of Dr. John E. Reinecke.)

A. I have associated with the plantation people, both as a teacher and as a sort of an amateur in the field of labor relations, and I find that the laboring people who are almost all from the non-haole group, regard "haole" and "boss," practically as synonymous. If one lives in a plantation village one sees a very distinct difference in the manner of life of the haoles in that community and of the non-haoles; in such a place as Lanai City, for example, the bulk of the population live on the flat at the foot of the mountains, while the supervisors and executives, who are with very few exceptions haoles, live on the slope of the mountain, called "Snob Hill."

Q. Is that the Snob Hill that is accepted terminology in the community of Hawaii?

A. It is among the working people. I don't know what it is among the supervisors.

Judge Biggs: I assume it is not accepted among the supervisors.

I think you can wind this up more than you are doing, Mrs. Bouslog. Aren't we getting rather far afield here?

Mrs. Bouslog: This is background material, having particular reference to 1947.

Judge Biggs: Let's cut the background material as short as you can now. I think we have enough background to give us the general picture. [231]

Q. What connection do the large plantations, both sugar and pineapple, in the county of Maui,

(Testimony of Dr. John E. Reinecke.)

have with the economic structure of the Territory as a whole?

A. They are very closely connected with the economic structure as a whole. Now it happens that in the county of Maui there are branches of three large mainland pineapple companies but all the other major plantations, and three of the large ranches, and a number of subsidiary industries, are part of what is called,—loosely called the Big-5 structure. That is, the ownership and direction of these companies is closely connected with the ownership and direction of the leading firms on all the other islands centered here in Honolulu. It is well-known and accepted fact in the Territory that such centralization of control does exist.

Q. What is the method used,—what is, economically speaking, the method of centralization of control?

A. I think practically every known method. That is, there is interlocking of investments; interlocking of shareholdings; interlocking of directors and officers, and what may be called a general common outlook on the part of the people who control these industries. That is brought out very clearly and distinctly in Professor James H. Shoemaker's monograph: "Labor in the Territory of Hawaii, 1939," Chapter 25.

Judge Biggs: I take it you make the same objection?

Mr. Crockett: Yes, if the Court please. [232]

(Testimony of Dr. John E. Reinecke.)

Judge Biggs: Is that document to which you refer Bulletin 687, United States Department of Labor, Bureau of Labor Statistics?

Witness: It is.

Q. (By Judge Biggs): Has there been any substantial change, in your opinion?

A. Your Honor, I have been making some study of the——

Q. Just answer my question. Is there, or is there not, a substantial change?

A. There is no substantial change, your Honor.

Judge Biggs: You offer this document, of which we can take judicial notice anyhow?

Mrs. Bouslog: Yes.

Judge Biggs: All right, let it be offered, and let it be marked, subject to the same ruling as heretofore.

Mrs. Bouslog: I will call the Court's attention particularly to Chapter 3, second section, labor supply, Chapter 25, business structure, and chapter 26, labor organizations, your Honors.

Judge Biggs: Very well. It will be Plaintiffs' Exhibit number 19.

(Document offered in evidence received and marked: "Plaintiffs' Exhibit No. 19.)

Q. Will you continue with your statement of the connection between the big companies on Maui and the factor system [233] centered in Honolulu?

A. Yes. All of the plantations, with the exception of the three branches of the mainland con-

(Testimony of Dr. John E. Reinecke.)

cerns,—that is—beg pardon, I said three; I meant two, the Libby, McNeill & Libby and the California Packing Corporation, and all the others are represented by one or another of the five agencies or factors that are commonly known as the Big-5.

Q. How does the factor system work in relation to the pineapple and sugar companies?

A. The entire structure,—the direction of these pineapple and sugar companies, particularly the sugar companies, is in the hands of the factors to such an extent that in the case of the sugar companies they can in many cases be called practically departments of the factors. The factors act as agents for them in purchasing, selling, financial transactions of all sort, and to a considerable extent even in technical matters.

I might mention further that several of the public utilities and stores on the island of Maui are,—and the leading irrigation system,—are subsidiaries of the plantations.

Q. Are the names of the various Big-5 that dominate,—or the dominant firms on Maui, already in the record, in the transcript?

A. I don't know whether they are or not.

Mrs. Bouslog: I think the record will so show, or I [234] will furnish the Court a list—

Judge Biggs: Either it does or it does not. Are you satisfied it does?

Mrs. Bouslog: My recollection is that it does.

Judge Biggs: You will have to rely on your rec-

(Testimony of Dr. John E. Reinecke.)

ollection, then, unless you want to prove it in some other way.

Q. Have you examined the transcript, Dr. Reinecke, for the purpose of determining if there was brought out during the course of the hearing before Judge Cristy any information which involves or requires a statistical correction in regard to the racial composition of the 1947 Grand Jury?

A. I have examined it, and I find that as regards tables 1 and 2—table 1 is Caucasian, and non-Caucasians in the population, and the Grand Jury panel of Maui County, and table 2 is Caucasians, including part-Hawaiians, and non-Caucasians in the population, and the Grand Jury panel of Maui, and those two tables are substantially correct.

The figures have to be changed by 2 or 4% in the grand jury panel column to allow for errors which were made in our preliminary investigation of the individuals on the panels.

Judge Biggs: Now will that be clear to the Court without a corrected table?

Mrs. Bouslog: We will furnish the Court with a corrected table, table 1 and table 2, so that it shows—[235] or I think it will be made very clear here by the new document that we are going to offer but we can—

Judge Biggs: If it is going to be made clear in some other way, why go ahead.

Mrs. Bouslog: However, I believe that table 1 and that one in particular, it is not quite a true

(Testimony of Dr. John E. Reinecke.)

picture of the authentic composition of the grand jury in relation to the total population of Maui County in that it does not distinguish between the haoles and Portuguese among the Caucasians on the list. It happens that other Caucasians in Maui County—and that, as I said before, includes some individuals who are not classed as haoles; other Caucasians, amounting to approximately 3.7% of the total population, and approximately 4.9% of the males, 21 to 60 years of age; citizens of the United States, and therefore presumably eligible for jury service, while the percentage of haoles on the grand jury panel is as follows——

Judge Biggs: Do you propose to offer a table?

Mrs. Bouslog: We have a table, your Honor, that shows a——

Judge Biggs: Now this table was prepared by the witness?

Mrs. Bouslog: By the witness, your Honor, yes.

Judge Biggs: Has it been examined by Mr. Crockett?

Mrs. Bouslog: I will give Mr. Crockett a copy of it. [236]

Q. Dr. Reinecke, you are referring, first, to the proportion of other Caucasians as it falls in the total population of Maui County, is that correct?

A. Yes.

Q. Is this the table which you prepared showing the proportion of other Caucasians in the total population of Maui County? A. It is.

(Testimony of Dr. John E. Reinecke.)

Q. And this is the document that you now are stating your conclusions from?

A. It is, and this is in addition, Mrs. Bouslog. This is something which I did not give you a copy of, but which I worked up for my own reference. This is the correction, or, rather, an addition to table 1, movant's Exhibit 5, in evidence.

Judge Biggs: Do you submit that, also?

Mrs. Bouslog: Yes.

Q. Did you make any copies, Dr. Reinecke?

A. I don't believe that I did. I worked this up in a great hurry.

Judge Biggs: How nearly have you concluded with this witness on the examination in chief?

Mrs. Bouslog: I have a number of other exhibits that I want to get into the record.

Judge Biggs: You want the same objection?

Mr. Crockett: Yes, as to its materiality, if the Court please.

Judge Biggs: The same ruling. We can mark them as one exhibit.

Mrs. Bouslog: I will withdraw this and make a copy for counsel.

Judge Biggs: All right. Exhibit 20.

(Documents referred to are received and marked: "Plaintiffs' Exhibit No. 20.")

(Testimony of Dr. John E. Reinecke.)

PLAINTIFF'S EXHIBIT No. 20

TABLE I

Male and female

	Caucasian	"O.C."
Male and female	12.5%	±3.6%
Male, 21 yrs. & over, 1940.....	11.2	3.4
Male, 21-60 yrs., 1947.....	11.2	3.4
Male, 21-60 yrs., citizens.....	16.2	4.9
Male, 21-60 yrs., citizens with 4 yrs. or more of school attendance.....	15.5	4.7
Male, with 8 yrs. or more of school attendance.....	17.0	5.1
Registered voters, 1946.....	22.9	6.9
[American and English=.....		6.78||
In grand jury panel		
1947 panel	54.0	42.0
1946	70.0	36-38.0
1945	62.0	34-36.0
1944	64.0	44.0
1943	60.0	38-40.0
1942	58.0	40.0

PROPORTION OR "OTHER CAUCASIANS"

IN THE TOTAL POPULATION OF MAUI COUNTY, 1920-1940

Year	Tot Pop., Maui County	Cauca- sians	Percent of Total	Port & Spanish	Percent of Total	Other Caucasians	Percent of Total
¹ 1940	55,980	6,989	12.5%	±4,946	± 8.8%	±2,043±	3.6%
² 1930	56,146	6,390	11.4%	4,522	8.1%	1,868	3.3%
³ 1920	37,385	6,062	16.2%	4,944	13.2%	1,118	3.0%

Footnotes to Table

¹16th Census of the United States 1940.

²2nd Series. Characteristics of the Population, Hawaii. Table 19. Approximate number and percentage of Portuguese & Spanish and of Other Caucasians determined by assuming that they form the same proportion of total Caucasians in 1940 as in 1930.

³15th Census of the United States: 1930—Population Second Series—Hawaii Composition and Characteristics of the Population and Unemployment. Table 19. Percentages calculated.

⁴14th Census of the United States. 1920. Volume III. Population. Composition and Characteristics of the Population by States. Section on Hawaii, Table 19, p. 1190. Percentages calculated.

⁵Puerto Ricans are not included as Caucasians, though many are unmixed whites. "Other Caucasians" include not only Haoles, but also the offspring of marriages among Caucasian groups, as for example

(Testimony of Dr. John E. Reinecke.)

a Russian and a Portuguese, or a Haole and a white Puerto Rican. The social, as distinguished from the census classification of the children depends on the circumstances.

⁵Percentage that "Other Caucasians" formed of all Caucasians:

1940—about 29.2% (assumed)

1930—29.2%

1920—18.4%

Admitted.

Mrs. Bouslog: I would like to ask the Court's permission to substitute other copies for these, which will contain the same information.

Judge Biggs: Permission is granted.

Q. Now will you continue with your explanation of your conclusions from these tables which have been submitted.

A. The conclusion, in short, is this: That the 1947 jury panels will contain—while containing 54% of Caucasians, contains 42% of haoles, and the proportion for the five years preceding, given in this table, runs from 34 to 44% haoles. Now it is obvious that while Caucasians, including both haoles and Portuguese, are heavily overrepresented in the grand jury panels, that the over-representation of haoles is vastly greater than that of all Caucasians.

Q. That is, other Caucasians, as shown in the census table? A. Beg pardon. No.

Q. Haole as distinguished from other Caucasians, as shown [238] in the census tables?

A. I don't think I made myself clear. We will say the Caucasian population in 1940 came to 12.5%, but there were 54% of Caucasians on the

(Testimony of Dr. John E. Reinecke.)

panel. That included both haoles and Portuguese. However, there were only somewhere around 3.6 or 3.7 haoles—or, I beg pardon, other Caucasians, which includes haoles and a few others.

Judge Biggs: I am getting all fouled up, completely. Begin again, would you please, as to the 54%.

A. The 54% Caucasians on the grand jury panel, whereas there were only 12.5% Caucasians in the general population. There were 42% of haoles.

Q. 42% of what? A. Of haoles.

Q. (By Judge Biggs): Of what?

A. The grand jury panel, in 1947, while there were about 3.6 or 3.7% of other Caucasians who were in the main haoles in the general population of Maui County.

Judge Biggs: Yes.

A. That is the point that I am trying to make, your Honor.

Judge Biggs: I believe it is clear now.

Q. (By Mrs. Bouslog): Have you, Dr. Reinecke, analyzed the grand jury list for the years 1942 through 1947 to determine the haole and non-haole, in comparison with this 3% of haole population?

A. Well, I have prepared a list of the haoles on each of [239] these grand jury panels. There are a few individuals who are doubtful. I have marked them with a question mark.

(Testimony of Dr. John E. Reinecke.)

Q. Beginning in 1942 will you contrast the number of persons from the occupational and racial information you have who are haoles?

Beginning in 1942 will you state the percentage, as well as the percentage—the number of persons of the Caucasian or haole race, in relation to the three per cent, that exists in the population of Maui County?

Judge Biggs: May be have that stated as to exactly what we are using that term to mean; in what sense?

Mrs. Bouslog: The question, your Honor, to restate it, is:

Q. Will you state—and I asked the witness if he had analyzed the 1947 grand jury list as well as the list from 1942 to 1947, to determine the number of haoles listed.

Judge Biggs: You mean 1942 to 1947?

Mrs. Bouslog: Yes, to determined the number of haoles as this term has been explained and employed here, and the way this list appears in contrast to the 3% that exists in the population.

Judge Biggs: Mrs. Bouslog said Caucasians or haoles. I think it is now clear.

A. I understand the question now. In 1942 there were 20 haoles or 40% of the grand jury panel. In 1943 there were 19 or 20 haoles, or 38 or 40% and in 1944 there were 22, or [240] 44% and in 1945 there were 17 or 18, being 34 to 36% and in 1946 there were 18 or 19, being 36 or 38%, and in 1947 there were 21, being 42%.

(Testimony of Dr. John E. Reinecke.)

Q. In contrast with the 3% haoles in the population?

A. Somewhat over 3%; somewhere between 3 and 4%, by interpolation.

Q. Have you listed the names of the persons who constitute these various members?

A. I have.

Q. Of the various grand juries?

A. I have it here.

(Recess.)

Mrs. Bouslog: Your Honors, during the recess I have shown to Mr. Crockett, and I find I have an extra copy that I can give to Mr. Crockett, a table of the Maui Grand Jury panel for the year 1947, showing the names and the number of the grand jury list, of each jury member, the racial or national extraction, with comments as to the standing of that particular individual in the economic structure of Maui County, and also his occupation.

Q. In making up this table, all the information contained in the transcript about the individual either was testified to by himself or is the jury commissioners'—he has testified to it, and which has been collected and correlated so that this is a summary of the plaintiffs' relating to the 1947 [241] grand jury itself.

Q. Dr. Reinecke, I have here this table to which we have been referring. Did you prepare this table? A. I did.

Q. And in preparing the table did you examine

(Testimony of Dr. John E. Reinecke.)

and refer to the transcript of the testimony, including the defendants' as well as the plaintiffs' case? A. I did.

Q. Did you use also any other available personal information that you have received, personal or otherwise? A. I did.

Judge Biggs: The offer is objected to on the same ground?

Mr. Crockett: With the additional fact that counsel has made a statement that this table shows a reference to all members of the grand jury. There were certain members of the grand jury called by the prosecution in that case, and who gave evidence showing that they were members of the union, and, for example, on page 2 of the list, list number 3, the name Roy Edo appears, and there is no reference whatever to him.

Judge Biggs: We think the list should be complete, or it should not be offered.

Mrs. Bouslog: This contains all the information as to race, and nationality and occupation. There will be [242] other testimony regarding the various things that Mr. Crockett has referred to. This refers only to the race and occupation.

Judge Biggs: How is it headed?

Mrs. Bouslog: Maui Grand Jury panel, 1947. The person's name, the racial or national extraction, and occupation.

Judge Biggs: You correct your offer to that extent? Do you object on any other ground than the relevancy and materiality?

(Testimony of Dr. John E. Reinecke.)

Mr. Crockett: No, your Honor.

Judge Biggs: It will be received as Exhibit Number 21.

(Document offered is received and marked:
"Plaintiffs' Exhibit 21.")

(Testimony of Dr. John E. Reinecke.)

PLAINTIFF'S EXHIBIT No. 21

MAUI GRAND JURY PANEL, 1947	
Precinct	Name
13	Ajifu, Masao Mac.....Japanese (196)
6	Allen, Ray M.....Haole (189)
13	Alu, Mau Hin Edward.....Chinese-Hawaiian
32	Auld, Kenneth W.....Scotch-Hawaiian (420)
9	Ayers, Eugene K.....English-Hawaiian (193)
26	Baldwin, Edward H K.....Haole (422)
18	Baldwin, Richard H.....Haole (426)
3	Bowmer, Edward S.....Haole (born in England) (427)
13	Broadbent, Frank W.....Haole
16	Bruce, Robert P.....Haole (born in Scotland) (434)
2	Burns, Alfred S.....Haole (166-7)
4	Chew, Yong Kam.....Chinese (naturalized citizen) (172)
16	Coleman, Gottlieb Z.....Caucasian - Hawaiian (287, 375) (but considered a Haole by workers at Maui Ag. Co.)

Occupation

Unemployed (mental disability due to wound) (196)
 Manager of Wailuku Sugar Co., Ltd. (189)
 Machinist journeyman, HC&SCo. (513)
 Section supt., California Packing Corp. plantation (420) Owner of Budget Shop, Kaunakakai, Molokai. Freight clerk, Naval Freight Office (193)
 Manager, Ulupalakua Ranch (422)
 Manager, Haleakala Ranch (425)
 Cashier and asst. bookkeeper, Baldwin Packers, Ltd. (427)
 2nd asst. manager, HC&SCo. Manager of E. Maui Irrigation Co. (434) and civil engineer
 Supt. of trucking dept., Baldwin Packers, Ltd. (166)
 Owner of Let Lung grocery store, Lahaina (172)
 Floor dept. head, trucking dept., Maui Ag. Co. (199)

(Testimony of Dr. John E. Reinecke.)

Precinct	Name	Racial and/or National Extraction	Occupation
4	Cornwell, Ralph O.....	Caucasian-Hawaiian (291)	In U. S. Army 1940-45 (172), later occupation uncertain but probably truck driver for Air Ways (291)
3	Correia, Manuel, Jr.....	Portuguese-Hawaiian	Crane operator, Pioneer Mill Co. (187, 169)
13	Costa, Jack.....	Portuguese (437)	Chief electrician, HC&SCo. mill (437)
12	de Ponte, Manuel.....	Portuguese (287)	Asst. personnel director, Kahului R.R. Co. "Running a booze joint now." (295)
1	Eldredge, David P.....	Caucasian-Hawaiian	Assistant, personnel dept., Hawaiian Pineapple Co., Lanai (166)
14	Elmore, E. Stanley.....	Haole (197)	Pres.-manager of Valley Isle Motors, Ltd. (197) Commissioner of Public Instruction for Maui
16	English, Heine W.....	Haole (Married to a Hawaiian and erroneously considered part-H'n. by Mr. Pombo, 287)	Supervisor of Maui Ag. Co. garage; manager of Maui Amusement Theatre, Paia (374) (Special investigation)
6	Ezell, Allan H.....	Haole (441)	Branch manager, Hawaiian Air Lines, Maui (440)
15	Feiteira, Manuel M.....	Portuguese	Head timekeeper, Maui Ag. Co. ()
13	Fleming, James M.....	Haole	Manager of Shell Oil Co. on Maui (370)
27	Fong, Henry S. S.....	Chinese (465)	Merchant (owner and manager of store and theater) and contractor (465)
12	Fredholm, Glen H.....	Haole	Supt. of trucking dept., Kahului R. R. (367)

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 21 (Continued)

Precinct	Name	Racial and/or National Extraction	Occupation
30	Freil, Stanley C.	Caucasian-Hawaiian (205)	Foreman, U.S. Engineers Office (205) Owner of quarry on Molokai; former wharf foreman for pineapple companies (Special investigation)
27	Goodness, Charles	Chinese-Caucasian-Hawaiian	Present occupation unknown (recently lost an arm) (204); formerly truck operator, Maui County (299)
9	Haygood, Paul A.	Haole (193)	Manager, Maui Soda & Ice Works, Ltd. (Special investigation) (367)
19	Holt, Walter W.	Caucasian-Hawaiian (Caucasian by own statement, p. 442—probably erroneous transcription)	Forester, Terr. Board of Forestry (442); waived exemption
3	Ito, Roy Tatsumi	Japanese	Assistant research worker, Hawaiian Pineapple Co.; formerly a checker (179)
8	Maeda, Irving F.	Japanese (192)	Public accountant (192)
16	Moodie, Andrew	Haole (198)	Manager of Paia Store, owned by Maui Ag. Co. (198)
31	Morris, Charles E.	Haole (205)	Owner and manager of Kukui open air theater, Kaunakakai, Molokai (205)
19	Muroki, Edwin Kiyoshi	Japanese	Storekeeper, Libby, McNeill & Libby (515)
7	Nakamoto, Shosaku	Japanese	Manager, Olympic Market, Wailuku (Special investigation (363)
17	Nunes, Edmund ("Mundo")	Portuguese (287, 200)	Overseer, Board of Water Works, Maui County (200)

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 21 (Continued)

Precinct	Name	Racial and/or National Extraction	Occupation
1	Onuma, Toshio	Japanese (169)	Research worker, Hawaiian Pineapple Co., Lanai (169)
7	Percy, Winford W.	Haole (191)	Manager, Maui Appliance Co., Wailuku (191). Excused as overage.
12	Peterson, Herbert S.	Haole (485)	Manager, Puunene Store, owned by HC&SCo. (484)
21	Plunkett, John	Irish-Hawaiian (444)	Supervisor, E. Maui Irrigation Co. (444) Overage but waived exemption.
33	Reinhart, Paul	Haole (446)	Asst. plantation manager, Libby, McNeill & Libby (446)
8	Rezents, Ernest	Portuguese (287)	Locomotive fireman, Wailuku Sugar Co. (184)
10	Saka, Charles H.	Japanese	Warehouse clerk, Wailuku Sugar Co. (182)
23	Simpson, Albert S.	Haole (287)	Vice-Pres. & Manager, Hana Ranch Co. and hotel; rep. of Irwin Estate (203)
18	Tam, Anthony A.	Chinese (448)	Farmer (cattle farm) (448-50)
28	Thompson, Charles E.	German-Hawaiian (451)	Retired farmer (ranchman) (408) Overage but waived exemption.
6	Tom, Wai Ken	Chinese (453)	"Supervisor of revenue," Mutual Telephone Co., Maui branch (apparently chief collector) (452)
8	Trask, Joseph H.	Caucasian (own statement, 454; said to be Haole by Mr. Pombo, 286, but may be part-Portuguese)	Manager, Paia branch of Bank of Hawaii (454)

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 21 (Continued)

Precinct	Name	Racial and/or National Extraction	Occupation
15	Waterhouse, Albert D.....	Haole (287)	Irrigation supt., Maui Ag. Co. (198)
7	Sequeira, Louis N.....	Portuguese, with probably some Negro blood from Cape Verde Islands (285-286) ; considered Caucasian by Mr. Chatterton (362)	Manager, accessory & parts dept., Wailuku branch of Von Hamm-Young Co., Ltd. (191)

Note: Numbers in parentheses refer to pages of Transcript, Civil No. 828. Information not referred to transcript was obtained by special investigation, checked in several instances by reference to questionnaires.

Admitted.

(Testimony of Dr. John E. Reinecke.)

Judge Biggs: How many copies do you have of this, please?

Mrs. Bouslog: Well, I had three. I gave Mr. Crockett one, and I can get further copies if needed.

Judge Biggs: Of all these exhibits, of the ones you are now offering?

Mrs. Bouslog: Yes. In the time allowed for the presentation of the case, I did not have any time.

Judge Biggs: You can get them up later?

Mrs. Bouslog: Yes.

Q. Now, Mr. Reinecke, how many members of the 1947 grand [243] jury are managers of important firms in the economic structure of Maui County?

A. Well, going down the list, and taking the people who are either proprietors on their own, or managers, or assistant managers, of large firms, I should list the following people: Mr. Allen, Mr. Edward Baldwin, Mr. Richard Baldwin, Mr. Broadbent, Mr. Burns, Mr. Elsmore, Mr. Izell, Mr. Haggood, Mr. Moodie, Mr. Peterson, Mr. Simpson and Mr. Waterhouse. That is 12.

Q. That is 12 or 24%, in the 1947 grand jury list?

A. Yes.

Q. And what percent of the population are manager, or would come in that particular classification or occupation, or classification in the population of Maui County? Give your best estimate of the number of managers, Dr. Reinecke?

A. Well, I say that less than four per cent come

(Testimony of Dr. John E. Reinecke.)

in the class of proprietors, managers and officials, except farm, for the whole county, and so I should estimate less than $\frac{1}{2}$ of 1%.

Q. (By Judge Biggs): What document are you referring to as the basis of your answer?

A. Table 3, your Honor.

Q. (By Judge Biggs): Prepared by you?

A. Yes, movant's Exhibit 7 in evidence.

Q. (By Judge Biggs): That is stipulated in the evidence. Did [244] you prepare that table?

A. No. That was prepared by Mr. Harry Oshima.

Q. Whose qualifications are referred to in the transcript as to the persons in this particular case, in Maui County—this is, managers of big industrial concerns or managers. What percentage did you say, Dr. Reinecke?

A. Oh, for the whole county?

Q. Yes.

A. I should estimate considerably less than one-half of 1% of the total population, of the total actively employed, rather.

Q. Would fall in that classification?

A. Would fall in that classification.

Q. In Maui County?

A. In Maui County.

Q. How many of the members of the 1947 grand jury are daily wage earners?

Mr. Crockett: If the Court please, I would ask that counsel make that question a little more def-

(Testimony of Dr. John E. Reinecke.)

inite. Is she referring to the members of the grand jury or the members of the list? There is quite a difference. In other words, the list consists of 50 names selected by the jury commissioners, and the grand jury panel deals with approximately 23 names, and I think the record should show definitely to which she refers. [245]

Judge Biggs: Suppose you specify that in your question.

Mrs. Bouslog: I am referring to the grand jury list of 50, and I am referring there to the number 50, Mr. Crockett.

Q. How many members of the 1947 grand jury list are daily wage earners?

A. That is a little more difficult to determine than the other, but I should say that Mr. Alui, Mr. Cornwall, Mr. Correa, Mr. Resente are pretty clearly daily wage earners. Also that Mr. Iziku, who is unemployed, was in all probability a wage earner before he went into the Army, and would come in the general class, and there is some question as to Mr. Ayers, and he was, I believe, a wage earning employee at the time the grand jury panel was drawn, and he is now classified as a slate clerk, and I usppose is on a salary, but in all that would be about six men, taking the commissioner's estimate.

Q. Are daily wage earners. Are any of those common laborers?

A. None of them, so far as I know—so far as I can tell, unless truck driving, I believe, is actually common labor. That is the nearest to it of any.

(Testimony of Dr. John E. Reinecke.)

Q. Now in terms of the United States Census classification of managerial, of managerial, archi-panelial and clerical groups—do the remaining people on the panel fall in that [246] category?

A. They do, with two exceptions. Mr. Tam, Anthony Tamm, and Charles Thompson.

Q. Mr. Thompson; why does Mr. Thompson not fall in that class?

A. He is a retired farmer, and apparently a dirt farmer, a man who does his own work, or the major part of it; the same being true of Mr. Tamm.

Judge Biggs: Is that the definition of dirt farmer, a man who does his own work?

A. I don't know if that is the census classification, your Honor. It is the generally accepted definition of it, I believe.

Judge Biggs: Very well.

Q. In other words, he is on a plantation; if he doesn't do his own work, he is on the plantation—

Judge Biggs: Let me inquire.

Q. (By Judge Biggs): Does that mean that he owned his own farm or not, in your opinion?

A. It does mean that he owns or rents his own farm.

Q. Not owns or rents. Does he own his own farm, or doesn't that appear?

A. That does not appear, but the circumstances are such—the chances are that he does not.

Judge Biggs: Well, "chances" is not enough.

A. I might call the attention of the Court that

(Testimony of Dr. John E. Reinecke.)

there is not [247] much of the Territorial lands, the Hawaii lands, in individuals, large tracts of land, there is very little, apart from the plantations, very little directly owned land—and I believe 90% of the privately owned land is owned by a——

Judge Biggs: We are getting pretty far afield.

Q. After the hearings before Judge Cristy, Dr. Reinecke, the defendant called as witnesses three union members whom you have classed as clerical employees, and have not classed as daily wage earners. Will you tell the Court how and why you have classified Skai as a clerical employee, rather than a daily wage earner?

Mr. Crockett: If the Court please, might I suggest at this time that my objection to this document is that it contains nothing—it did not contain the reference to the jury. This testimony was insufficient. The testimony appears on page 182 of the transcript.

Q. Have you classified Charles Sakai as a clerical employee rather than a daily wage earner?

A. To the best of my knowledge, Mr. Sakai being a warehouse clerk, it is predominantly clerical work, and he receives a monthly salary.

Q. And how about Mr. Moroka?

A. Mr. Edward K. Moroke is I presume, being a storekeeper, for Libby, McNeill & Libby—I presume it is practically the same sort of work as Mr. Sakai. [248]

(Testimony of Dr. John E. Reinecke.)

Q. Do you know of your own knowledge what Mr. Moroke's educational qualifications are?

A. From the material which we gathered, I forget whether it appears in his grand jury questionnaire or not—I believe that Mr. Moroke has a high school education—12th grade education; that is purely from memory. I don't have the individual cards with me, unfortunately.

Mrs. Bouslog: Your Honor, one of the exhibits in the case will be—I guess it has not been offered. I will show it to the witness.

Q. Is that the same Edward T. Moroke that you are talking about? (Indicating.)

A. Edward T. Moroke, yes.

Q. What is this document?

A. The returned jury questionnaire for Mr. Moroke.

Mrs. Bouslog: It will be in the record, your Honor.

A. I see that my memory is in error. He says in the questionnaire that he has had 2½ years University of Hawaii education.

Q. And he is classified, in the classification which you have made, as a clerical employee, as opposed to a daily wage earner?

A. That's right.

Q. Now as to Mr. Ito.

A. Mr. Ito, it appears, is an associate research worker for [249] the Hawaiian Pineapple Company, and I believe that that would be the same

(Testimony of Dr. John E. Reinecke.)

profession—or it is a semi-profession or occupation, and I presume that he draws a monthly salary.

Q. And how about Mr. Onuma?

A. The same.

Q. Is there any agricultural worker or any laborer on the panel? A. There is none.

Q. That is, on the grand jury list?

A. There is none.

Q. Was the grand jury list the list of 50?

A. The list of 50.

Q. What percentage of employed persons in Maui County are agricultural laborers?

A. Approximately 49%.

Q. Have you any evidence that substantiates your testimony that there is a recognized——

A. I beg your pardon. That is, I made a mistake there; that is, farm laborers, and farm foremen come to 48.82% and after deductions for male non-laborers it comes to 46.41%; 46% is the farm laborers in the employed persons in Maui County.

Q. 46% is the farm laborers in the employed persons in that county? A. That's right.

Q. Have you any evidence to support your conclusion that [250] there is a recognized social-economic distinction between clerical and common laborers, or daily wage earners?

A. Yes, I have. I think that not only is it a matter of common knowledge in the Maui community, but it would appear from published studies, as

(Testimony of Dr. John E. Reinecke.)

well, and I should like leave to read pertinent paragraphs on the significance of the social-economic group.

Judge Biggs: Well, we can all read. Why not simply submit it, and refer to the document, or include copies in the record?

Mrs. Bouslog: All right, your Honor. May we have the document, Dr. Reinecke?

Witness: The marked paragraph, marked in pencil on the margin.

Mrs. Bouslog: This, your Honor, is from the 16th Census of the United States, 1940, United States Department of Commerce; population; comparative occupational statistics for the United States, 1870 to 1940, and the particular part referred to is social-economic group, and the heading of it, to which we refer, is "The significance of the social-economic group."

Judge Biggs: Very well, we will take judicial notice of that, and it is not necessary to introduce the document, even; we can get that from the library very easily.

Q. Now, Dr. Reinecke, can you tell us the number of Filipinos [251] in Maui County, from, say, the year 1920, on?

A. I have tried to get an estimate of the present Filipino population, but I am unable to do so. I have the figures for the three censuses, 1920, 1930 and 1940. In 1920 the Filipinos numbered 3,004, or only 8% of the total population; in 1930, there were 14,144, or 25.2%; in 1940 the number had

(Testimony of Dr. John E. Reinecke.)

dropped to 10,509, or 18.8%. I presume that it has not departed very much from that figure since.

Judge Biggs: You say you presume that it has not departed much from that figure.

A. I don't believe it has departed very much from that figure.

Judge Biggs: I suppose you mean the figure has not changed materially.

A. It has not changed materially, your Honor.

Mr. Crockett: May I ask please for the percentage for 1940? A. It was 18.8%.

Q. Have there been any large scale groups of importations of Filipinos since 1940?

A. Some six thousand adult males, I think, and around 2500 females, and children, were imported here.

Q. So that if anything the figure would have been increased rather than decreased since 1940?

A. Perhaps slightly. I think that it would not have increased [252] more than 1%, however. I think that we can take something between 18 and 20% as being the present proportion of Filipinos, or the percentage of Filipinos.

Q. Is the Filipino the largest ethnic group in the Territory?

A. No, it is not the largest group. It amounts to approximately one-third of the total employees, and families, as of June 30, 1947.

Q. Is that for Maui county or for the Territory?

A. That is for the Territory.

(Testimony of Dr. John E. Reinecke.)

Q. Now with respect to Maui county?

A. Take Maui County—taking the men alone, in Maui county, there are 59,032 men of all races, and the Filipinos amount to two thousand seventy-two—or about 35%. I presume that most of the men on the plantations are plantation employees.

Judge Metzger: May I ask, does not the Territorial Board of Health make an annual census which would approximate that?

Mrs. Bouslog: They use recognized method, the population tendencies and characteristics, which were also used by the expert witnesses which prepared the tables in this case.

In other words, all available sources of information, the annual report of the Board of Health, and statistics—any statistics which the Department of Labor used, were drawn upon in order to complete the tables that were used in this [253] case.

Q. Now, with respect to sugar and pineapple plantations, what percentage of the laborers on those plantations is of Filipino ethnic classification?

A. The figures which I just gave are from the Hawaiian Sugar Planters' Association, census of Hawaiian Sugar plantations, June 30, 1947, but that does not include the pineapple plantations. I have no way of knowing whether the proportion is greater or smaller on the pineapple plantations.

Q. What is the document that you referred to?

Judge Biggs: Would you hold it up, Doctor, so we may see it.

(Testimony of Dr. John E. Reinecke.)

Do you propose to offer this document?

Mrs. Bouslog: If the Court desires it.

Judge Biggs: I think we should have the supporting documents to which the witness refers. Has Mr. Crockett seen it?

(Document shown to Court and opposing counsel.)

Judge Biggs: Now, Miss Lewis, will you be ready with your motion pictures after lunch, after the noon recess?

Miss Lewis: We thought it might be better if Mrs. Bouslog has not concluded—and we have other witnesses—if we showed that Monday morning.

Judge Biggs: All right. Very well. The Court will stand in recess until 2 o'clock p.m.

Adjourned to 2 p.m., April 23, 1948. [254]

April 24, 1948

2:00 o'Clock p.m. Session

JOHN E. REINECKE

having been previously sworn, was recalled, and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Dr. Reinecke, what is the second largest ethnic national group in Maui County?

A. It is the Filipino.

Q. Representing what percentage of the population?

(Testimony of Dr. John E. Reinecke.)

A. 18.8 percent, according to the latest census.

Q. What percentage of the population, or what percentage of plantation laborers in Maui County are Filipinos?

A. Do you mean the people classed as foreign laborers in the census?

Q. I mean of the field hands.

A. Of the field hands?

Q. Yes. A. Easily fifty percent.

Q. For the Territory as a whole, how many are there?

A. Oh, I should say 59 percent, approximately, at the time of the 1940 census.

Q. So that fifty percent in Maui County would be a conservative estimate? [255]

A. It would be.

Q. When were the first Filipinos imported into the Territory of Hawaii as laborers?

A. In 1907, as I recall.

Q. And since 1907 under what circumstances have persons of the Filipino race become citizens of the United States?

Miss Lewis: If your Honors please——

Judge Biggs: Isn't that too far afield?

Mrs. Bouslog: I don't think so, your Honor, since it goes to the eligibility.

Judge Biggs: Is this witness competent to testify to that? He is not a lawyer.

Mrs. Bouslog: Well, I suppose——

Judge Biggs: We can take judicial notice of

(Testimony of Dr. John E. Reinecke.)

the conditions or the status, at least, under which Filipinos may become citizens of the United States, but to ask this witness to testify concerning those seems to be too remote from this field.

Mrs. Bouslog: Very well, your Honor.

Judge Biggs: Objection sustained. He can draw conclusions from their failure to become citizens, if he desires. Do you desire to bring out, for example, that Filipinos can become citizens of the United States by being inducted or volunteering for the armed forces.

Mrs. Bouslog: Yes, if your Honor please, under the Organic Act, but that I can do myself. That's right. I [256] mean I think it is a matter of which the court can take judicial notice.

Q. When were Filipino voters first reported separately in the census report?

A. Not in the census report, in the reports filed with the Secretary of the Territory. 1932 is the first year in which they were separately reported.

Mrs. Bouslog: Mr. Crockett, I will show you a document which says—it is from the office of the County Clerk of Maui County—showing the number of Filipino registered voters for the election years 1934 to 1946, certified with the seal of Eugene Bal, County Clerk. I will give you a copy of it.

Mr. Crockett: No objection to this.

Judge Biggs: Except as to relevancy?

Mr. Crockett: Yes.

Judge Biggs: Same ruling.

(Testimony of Dr. John E. Reinecke.)

Mrs. Bouslog: I will offer this.

Judge Biggs: Let it be offered. It will be Number 22, Plaintiffs' Exhibit 22.

PLAINTIFFS' EXHIBIT No. 22

(Printed Seal)

OFFICE OF COUNTY CLERK

County of Maui

Wailuku, Maui, T. H.

April 22, 1948

Number of Filipino Voters Registered for the Election Years Covering 1934-1946

Year	Male	Female	Total
1934	9	4	13
1936	29	7	36
1938	67	17	84
1940	84	25	109
1942	72	27	99
1944	63	37	100
1946	103	84	187

This is to certify that the above is a true and correct transcript of the records on file in the Office of County Clerk, County of Maui, Territory of Hawaii.

EUGENE BAL,

County Clerk, County of Maui,

Territory of Hawaii.

[Seal]

Admitted.

Q. Mr. Reinecke, have you examined the records in the Secretary of the Territory's office so that you can tell us the number of registered male voters during those years in Lanai precinct, the first precinct of Maui County?

Judge Biggs: Did you waive the production of the original records? [257]

(Testimony of Dr. John E. Reinecke.)

Mr. Crockett: Yes, we have.

A. I have examined them, and the figures are as follows: 1932——

Judge Biggs: Are you going to put these in evidence?

Mr. Crockett: I have no table covering it.

A. It covers only about seven figures, your Honor.

Judge Biggs: Very well.

A. 1932, 1. 1934, 1. 1936, 6. 1938, 12. 1940, 25. 1942, 23. 1944—I have not the figures. 1946, 18.

Mrs. Bouslog: Now, with the courts' and Mr. Crockett's permission, to save the time of the court, I would like to ask the courts' permission to offer or submit to the court, at a later date, reserving the number—a list of names of persons whom we classify and know are Filipinos from the registry of voters for various precincts in Maui County, to show that there are qualified Filipinos—that is, persons of Filipino nationality who are qualified for voting, and the qualifications, of course, are the same for jury service.

Judge Biggs: When you say "we" you mean yourself and your associates, the plaintiffs?

Mrs. Bouslog: I mean the plaintiffs, your Honor.

Judge Biggs: Well, of course, what you know is not evidence.

Mrs. Bouslog: Well, I was asking Mr. Crockett to—the list would contain names. If Mr. Crockett had any objection, that the name was a Filipino name or a Filipino person——[258]

(Testimony of Dr. John E. Reinecke.)

Judge Biggs: Does the list show that the persons are in fact Filipinos?

Mrs. Bouslog: The list, your Honor, shows merely the precinct in Maui County, the names of the persons, and the address of the person, but because mostly in every precinct in Maui County the International Longshoremen's & Warehousemen's Union has members, we have our membership list. We have a list showing the nationality of various people——

Judge Biggs: Unless you could procure a stipulation from Mr. Crockett——

Mrs. Bouslog: I understand without his stipulation it would not be admissible.

Judge Biggs: What is Mr. Crockett's pleasure in the matter, reserving, of course, the objection as to relevancy?

Mr. Crockett: It is all so indefinite. I would rather leave it until we get something definite. If we get the list and check it over, we can see what it says. It is this kind of indefiniteness in this proposal which leads us at this time to hesitate to enter into the stipulation.

Mrs. Bouslog: I will explain exactly what I would like to have, if possible, for the defendants to stipulate to. Perhaps he will stipulate that there are persons in each one of the precincts, or Filipino nationality who are eligible to vote, in Maui County.

Mr. Crockett: If the courts please, I understood [259] that the list which counsel showed me a

(Testimony of Dr. John E. Reinecke.)

few minutes ago showed me the numbers of such persons. I thought that would be sufficient.

Judge Biggs: You have 22 people, 22 Filipino voters registered for the elections, '34, '35, '36. This shows the number of male and female voters, and the total. Why do you go beyond that?

Mrs. Bouslog: I want to be sure, your Honor, that I have shown that there are individual Filipino persons who are in addition to the numbers—I mean that these numbers represent individuals, that they are qualified Filipinos for jury service in Maui County. I want to meet the burden of proof.

Judge Biggs: I see that you are trying, under your theory of the case, to make the proof, but I don't see how you are going to reach that by this avenue, unless there is an agreement by Mr. Crockett that in addition to the names shown on this list, or the numbers of persons shown on this list there are others who are not registered voters who are so qualified. Isn't that the case?

Mrs. Bouslog: Well, I think I can argue that there are others who are not registered voters who are so qualified.

Judge Biggs: You may be able to argue it, but before you can argue it, you have got to have something in the record.

Mrs. Bouslog: In respect to what I am showing now, [260] I wanted to take the names from the precinct records, which are on file with the County Clerk, to show individuals, specified individuals who

(Testimony of Dr. John E. Reinecke.)

are registered voters, and therefore, at least, they met the minimum requirements of the jury statute.

Judge Biggs: Aren't those registered voters?

Mrs. Bouslog: Yes, but there are no names attached to this list, and I wanted to be sure——

Judge Biggs: I am not sure what your point is that you bring to the situation. A man is or is not qualified to vote, because his name—I am afraid I am not getting it. Begin it again, Mrs. Bouslog.

Mrs. Bouslog: We have checked the registry of voters which we procured from the County Clerk of Maui County. We have gone down through a number of precincts and checked the names of persons who are of Filipino nationality who are registered to vote from the 1944 list, which the Grand Jury used, to see if there were individuals of Filipino nationality to whom questionnaires should have gone at the time, despite the fact that there were none selected for the Grand Jury. But if the court believes that the mere showing of—that there are registered voters of Filipino nationality according to the records in the clerk's office, at least that shows that that many people can vote in Maui County.

Judge Biggs: The court would not commit itself at this point as to whether your evidence is sufficient, or even whether it be pertinent, but I do think, if you intend [261] to prove that, you had better make proof of it, as well as you can, unless you can procure a stipulation. Mr. Crockett is

(Testimony of Dr. John E. Reinecke.)

apparently unwilling to stipulate at this point. Perhaps it can be discussed with him further, if you desire an opportunity, and this is your last witness.

Mrs. Bouslog: With two exceptions, your Honor, maybe.

Judge Biggs: Very well. Should you reopen your case, or will you conclude your case with evidence on this point at some time, Monday or, if necessary Tuesday?

Mrs. Bouslog: Your Honor, I will make up the list and submit it to Mr. Crockett, and he can make any objection, and then I will offer it into court, after that is done.

The Court: If he objects and will not stipulate, you will have to be in a position to prove it.

Mrs. Bouslog: Yes, your Honor.

Mr. Crockett, you will recall that one of the exhibits in the court before were a number of questionnaires of Filipino nationals—returned questionnaires—which was one of the exhibits in the case before Judge Cristy.

Q. I have in my hand an exhibit which was submitted before Judge Cristy, which is—several questionnaires, returned questionnaires of persons who indicate on their questionnaire that their nationality is Filipino, they are returned jury questionnaires, returned to the jury commissioners. Dr. Reinecke, have you examined these questionnaires and the transcript, and compared these questionnaires with the questionnaires [262] of Caucasians which were classified by the jury commissioners?

(Testimony of Dr. John E. Reinecke.)

A. I have examined these, and also the transcript regarding it. I have gone through the material on the Caucasians who are on the grand jury panels for 1942 to 1947.

Q. I hand you the questionnaire of Vincente Figueira who says that his father was a Filipino and his mother was a Filipino. It shows that he reached the 9th grade in school. Will you look on the records of the court? This questionnaire was marked "questionable." Look at that and see if Caucasians whose questionnaires showed the same amount of information were marked "qualified"?

Mr. Crockett: To which we object. I don't think that this witness is qualified to pass upon questions like that. That is a matter within the discretion of the jury commission.

Judge Biggs: I think the question is objectionable for another reason, Mrs. Bouslog, namely, that you are offering, or you are telling him to compare something with something.

Mrs. Bouslog: He has already done it. It is before the court in the form of a stipulation of record, your Honor.

Judge Biggs: Compared these questionnaires?

Mrs. Bouslog: With the other questionnaires. We have questionnaires for the 1947 grand jury.

Judge Biggs: You are asking him to compare these questionnaires with certain questionnaires which are in a [263] sense in futuro?

Mrs. Bouslog: Yes, they are.

(Testimony of Dr. John E. Reinecke.)

Judge Biggs: Let him compare first, and then rephrase your question, then we will hear the objection.

Q. Have you compared the questionnaires of persons of Filipino nationality with the questionnaires of persons who were actually selected for the grand jury service in 1947?

Judge Biggs: Which are now in your hands. Is that correct, Doctor?

A. I have compared them with these questionnaires, and I have also compared them with material which we drew from previous questionnaires.

Judge Biggs: I think the latter part of the answer must be stricken out. I don't see how we can have a basis of comparison on questionnaires of this character.

Mrs. Bouslog: I think, your Honor, that the record shows—that the stipulated record shows all these questionnaires were present in court at the time when the comparisons were made by him, during the whole hearing before Judge Cristy, and some of the information about these questionnaires is already in the record. I am merely picking up that information which is not in the record.

Judge Biggs: As I understand the witness testifies that he examined the questionnaires which were in the proceeding before Judge Cristy. He also examined various other [264] questionnaires, isn't that correct? A. That's correct, your Honor.

Judge Biggs: Now, I think you will have to limit your question to the comparison and examina-

(Testimony of Dr. John E. Reinecke.)

tion of those questionnaires which were before Judge Cristy.

Mrs. Bouslog: All of them were before Judge Cristy.

Judge Biggs: The witness says not, Mrs. Bouslog. Let me put it this way: Did you examine the questionnaires, or is your answer that you are about to make based on questionnaires which were not before Judge Cristy?

A. The answer is based on questionnaires which I examined. I don't know whether they were brought before Judge Cristy or not.

Mrs. Bouslog: Your Honor, I think the record will show that Judge Wirtz jury commissioner in his testimony offered and used throughout the hearing, and it was understood that these questionnaires being a part of the court records could not be offered in evidence in that case, but they were considered and offered before Judge Wirtz to show the method of selection of the jury panel. And these questionnaires were from all the precincts that had been examined.

Judge Biggs: Speaking for myself—I have not consulted with my brothers, I have no objection on this ground to your making use, or having this witness examine the questionnaires which were testified to before Judge [265] Cristy or Judge Wirtz, but I am not prepared to say that you may have his testimony respecting other questionnaires which were not in the other proceeding. It seems to me that it is too remote.

(Testimony of Dr. John E. Reinecke.)

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: For other reasons as well, I might as well state that, that you are offering a basis of comparison on something which is not before this court, and which was not before the court which went into the question of the jury panel.

Mrs. Bouslog: All right, at this time I will offer in evidence an exhibit which was before—which was offered by the plaintiffs before Judge Cristy. The exhibit number before Judge Cristy is 16. Questionnaires on the grand jury, which was received in evidence. I can have it given the next number.

Judge Biggs: That is in by stipulation?

Mrs. Bouslog: Not so far as the exhibits are concerned.

Miss Lewis: It was stipulated upon production that it might be admitted, subject to our objection which I have already made.

Judge Biggs: On objection as to its relevancy?

Miss Lewis: In general. It has been set forth in detail. The point is that we require it should be identified now.

Judge Biggs: Very well, you waive form. It is merely the question of relevancy. [266]

Mrs. Bouslog: So at this time, your Honor—

Judge Biggs: Let that be admitted and marked in some fashion.

Mrs. Bouslog: It should be marked questionnaires on instant grand jury.

(Testimony of Dr. John E. Reinecke.)

Judge Biggs: Number 23 I think it is.

Mrs. Bouslog: Number 23.

Judge Biggs: Let the clerk mark it. The papers which the doctor has are copies of this?

Mrs. Bouslog: These are photostatic copies of the actual grand jury questionnaires.

Judge Biggs: Very well.

Mrs. Bouslog: Movant's Exhibit 16.

Judge Biggs: Exhibit 23 here.

PLAINTIFF'S EXHIBIT No. 23

Note: Failure to return this Questionnaire on or before Oct. 10, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, on or before Oct. 10, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Charles Edward Thompson.
2. Address (a) Home: Kihei, Maui. Phone No. 7943.
(b) Business Rancher. Phone No. 7943.
3. When and Where born? Kona, Hawaii.
4. If Naturalized, when and where? No.
5. How long in Territory? 67 years. County of Maui? 50 years.
6. Married or single? Married. Number of children, if any? 16.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

7. Nationality of Father? German. Of Mother?
English Hawaiian.

8. What experience have you had as a Juror?
(Indicate whether Criminal or Civil case) both.
Served a number of times.

9. What is your present occupation? Rancher.

10. If employed, by whom and Name your superiors. Self.

11. What has been your occupation during the past five years? Ranching.

12. What schools have you attended? Public schools.

13. What grade in school did you reach? 8th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date Oct. 14th. Signature Charles Edward Thompson.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 5, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Note: Fill out each question in own hand writing, and on or before Oct. 5, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Edmund Nunes.

2. Address (a) Home: Makawao, Maui. Phone No. 3 White 606.

(b) Business Makawao, Maui. Phone No. 2 White 721.

3. When and Where born? June 25, 1897. Paia, Maui, Terr. Hawaii, [illegible].

4. If Naturalized, when and where?

5. How long in Territory? 49 years. County of Maui? 49 years.

6. Married or single? Married. Number of children, if any? 2.

Nationality of Father? Portuguese. Of Mother? Portuguese.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? District overseer for the County of Maui, Makawao District.

10. If employed, by whom and Name your superiors County of Maui.

11. What has been your occupation during the past five years? Superintendent.

12. What schools have you attended? Paia School and St. Anthony's Wailuku.

13. What grade in school did you reach? 8th.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

14. Is there any physical reason why you should not sit as a juror? If so, what reason?.....

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: Sept. 30, 1946. Signature Edmund Nunes.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 12, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 12, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Kenneth W. Auld.

2. Address (a) Home: Hoolehua, Molokai.
Phone No. 7W35.

(b) Business Calif. Packing Corp. Phone No...

3. When and Where born? Dec. 6, 1901. Honolulu.

4. If Naturalized, when and where?.....

5. How long in Territory? 48 yrs. County of Maui? 21 yrs.

6. Married or single? Married. Number of children, if any? 3.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

7. Nationality of Father? Part-Hawn. Of Mother? Part-Hawn.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) both. One year (Grand Jury).

9. What is your present occupation? Section Supt.

10. If employed, by whom and Name your superiors Wilson N. Jacobson, Calif. Packing Corp.

11. What has been your occupation during the past five years? Section Supt.

12. What schools have you attended? Kamehameha, Punahon, University of Hawaii.

13. What grade in school did you reach? Four years high school and thru U. of H.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: Oct. 10, 1946. Signature Kenneth W. Auld.

(See Statutes—reverse side)

[Notation in pencil] OK Grand.

Note: Failure to return this Questionnaire on or before Sept. 6th, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To Prospective Jurors, Circuit Court, Second Circuit.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Note: Fill out each question in own hand writing, and on or before September 6th, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Eugene Kealoha Ayers.

2. Address (a) Home: P.O. Box 564, Wailuku, Maui, T. H. Phone No. 7891.

(b) House No. 1332 Main St., Papohaku. Phone No.

3. When and Where born? Born Jan. 20, 1917, Papohaku, Maui, T. H.

4. If Naturalized, when and where?.....

5. How long in Territory? Twenty Nine Years. County of Maui? Twenty-nine years.

6. Married or single? Single. Number of children, if any? None.

7. Nationality of Father? English-Hawaiian. Of Mother? English-Hawaiian.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) I sat on two civil case as Trial Jury-man, year 1946.

9. What is your present occupation? Naval Air Station, Kahului Freight Clerk at Navy Freight Office, Kalului.

10. If employed, by whom and Name your superiors I am employed by Naval Air Station, Kahului. My superiors are Thomas Peco, foreman and Comdr. Formans, Naval Supply Officer.

11. What has been your occupation during the past five years? From 1941 I've been a Roller Oper.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)
for Hawaiian, conse., U. S. Engineers & P.N.A.B.
and Navy Freight Clerk.

12. What schools have you attended? St. Anthony Boys' School, Wailuku, Maui, T. H.

13. What grade in school did you reach? Graduated from the tenth grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No, I don't think there is any physical reason why I should not sit as a juror.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: August 9, 1946. Signature Eugene K. Ayers.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 10, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 10, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Edward Henry Kittredge Baldwin.

2. Address (a) Home: Ulupalakua. Phone No. 322.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

(b) Business Ulupalakua. Phone No. 321.

3. When and Where born? Sprecklesville, May 3, 1903.

4. If Naturalized, when and where?.....

5. How long in Territory? 43 years. County of Maui? 43 years.

6. Married or single? Married. Number of children, if any? two.

7. Nationality of Father? American. Of Mother? American.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case). One term Grand Jury.

9. What is your present occupation? Ranch manager.

10. If employed, by whom and Name your superiors Ulupalakua Ranch, Ltd.

11. What has been your occupation during the past five years? Ranch manager.

12. What schools have you attended? Maui High, Thacker School, A to Zed School, University of Virginia.

13. What grade in school did you reach?.....

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service?

Why.....

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Date: October 5, 1946. Signature E. H. K. Baldwin.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 5, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 5, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Richard H. Baldwin.
2. Address (a) Home: Makawao. Phone No. 204.
(b) Business Makawao. Phone No. 3W704.
3. When and Where born? Aug. 21, 1911, Honolulu.
4. If Naturalized, when and where?
5. How long in Territory? 35 years. County of Maui? 30 years.
6. Married or single? Married. Number of children, if any? 3.
7. Nationality of Father? American. Of Mother? American.
8. What experience have you had as a Juror (Indicate whether Criminal or Civil case) Grand Jury.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

9. What is your present occupation? Assistant manager of ranch.

10. If employed, by whom and Name your superiors Haliakala Ranch Co., S. A. Baldwin.

11. What has been your occupation during the past five years? Same.

12. What schools have you attended? Punahou; Cornell University.

13. What grade in school did you reach? Junior year, college.

14. Is there any physical reason why you should not sit as a juror? If so, what reason?.....

15. Do you claim disqualification or exemption from jury service? No.

Why (Am busy but will serve if necessary.)

Date: Sept. 30, 1946. Signature R. H. Baldwin.

(See Statutes—reverse side)

To: Prospective Jurors, Circuit Court, Second Judicial Circuit.

Note: Fill out each question in own hand writing, and on or before Dec. 6, 1945, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Edwin S. Bowmer.

2. Address (a) Home: Lahaina, Maui, T. H. Phone No. 2923.

(b) Business: Lahaina, Maui, T. H. Phone No. 2935.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

3. When and Where born? May 14, 1905, Newcastle-on-Tyne, England.

4. If Naturalized, when and where? Thru father who obtained his June, 1922, Honolulu.

5. How long in Territory? 26 years. County of Maui? 10 years.

6. Married or single? Married. Number of children, if any? 1.

7. Nationality of Father? English. Of Mother? English.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Cashier & Asst. Bookkeeper.

10. If employed, by whom and Name your superiors Baldwin Packers, Ltd. D. T. Fleming, Manager, Chas. W. Ashdown, Office Manager.

11. What has been your occupation during the past five years? Secretary to manager of Honolulu Plantation Co. and Cashier and Asst. Bookkeeper, Baldwin Packers, Ltd.

12. What schools have you attended? McKinley High School. Left after 1 year.

13. What grade in school did you reach? Freshman in High School.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

Why?.....

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Date: November 7, 1945. Signature Edwin S. Bowmer.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 4, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 4, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Alfred Sawyer Burns.

2. Address (a) Home: Honokahau, Lahaina. Phone No. 3135.

(b) Business Honokahau, Lahaina. Phone No. 3135.

3. When and Where born? 21st Feb., 1898, Fort Fairfield, Maine.

4. If Naturalized, when and where?.....

5. How long in Territory? 21 yrs. County of Maui? 21 yrs.

6. Married or single? Married. Number of children, if any? 2.

7. Nationality of Father? English. Of Mother? English.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Grand Jury 2 or 3 times, years ago, Maui.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

9. What is your present occupation? Transportation Super.

10. If employed, by whom and Name your superiors Baldwin Packers Ltd. D. T. Fleming. G. D. Russell.

11. What has been your occupation during the past five years? Transp. Super.

12. What schools have you attended? Fort Fairfield High School, University of Maine.

13. What grade in school did you reach?.....

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: 28th Sept., 1946. Signature A. S. Burns.

(See Statutes—reverse side)

To: Prospective Jurors, Circuit Court, Second Judicial Circuit.

Note: Fill out each question in own hand writing, and on or before Dec. 6, 1945, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name William Preston Burns.

2. Address (a) Home: P.O. Box 176, Paia, Maui.
Phone No. 2W598.

(b) Business:..... Phone No.....

3. When and Where born? June 30, 1903, Fort Fairfield, Maine.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

4. If Naturalized, when and where?.....

5. How long in Territory? 22 years. County of Maui? 22 years.

6. Married or single? M. Number of children, if any? 2.

7. Nationality of Father? American. Of Mother? American.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Civil—Trial Juror.

9. What is your present occupation? Harvesting field superintendent.

10. If employed, by whom and Name your superiors Maui Agri. Co., G. W. Steele.

11. What has been your occupation during the past five years? General Plantation Work and Harvesting.

12. What schools have you attended? High School, Arvostock Central Institute.

13. What grade in school did you reach? Graduate.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why?.....

Date: Nov. 9/45. Signature W. P. Burns.

(See Statutes—reverse side)

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

[Notation in pencil] OK. Grand.

Note: Failure to return this Questionnaire on or before Sept. 6th, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before September 6th, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Ralph O. Cornwell.

2. Address (a) Home: Kihei, Maui. Phone No. 7942.

(b) Business None at present. Phone No.....

3. When and Where born? Oct. 7th, 1910 at Waikapu.

4. If Naturalized, when and where?.....

5. How long in Territory?.....County of Maui? All my life.

6. Married or single? Single. Number of children, if any? None.

7. Nationality of Father? American. Of Mother? American.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? None.

10. If employed, by whom and Name your superiors None.

11. What has been your occupation during the past five years? U. S. Army.

Plaintiff's Exhibit No. 23—(Continued)

(Testimony of Dr. John E. Reinecke.)

12. What schools have you attended? Kamehameha & Lahainaluna schools.

13. What grade in school did you reach? Finished Junior year.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why? I think I'm qualified.

Date: Aug. 22/46. Signature Ralph O. Cornwell.
(See Statutes—reverse side)

[Notation in pencil] OK. Grand.

Note: Failure to return this Questionnaire on or before Sept. 6th, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court Second Circuit.

Note: Fill out each question in own hand writing, and on or before September 6th, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Mr. Manuel Correia, Jr.

2. Address (a) Home: 347 Puukolii Lahaina, Maui. Phone No.

(b) Business..... Phone No.....

3. When and Where born? Born at Wailuku, Maui, Sept. 1, 1896.

4. If Naturalized, when and where? Citizen of U. S.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

5. How long in Territory? 49 years. County of Maui? Yes.

6. Married or single? Divorced. Number of children, if any? 4.

7. Nationality of Father? Portuguese. Of Mother? Portuguese.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Criminal and civil cases.

9. What is your present occupation? Crane operator.

10. If employed, by whom and Name your superiors John T. Moir, Cebut. Vandrasa.

11. What has been your occupation during the past five years? Crane operator.

12. What schools have you attended? St. Anthony, and Lahaina Luna.

13. What grade in school did you reach? Tenth.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: August 29, 1946. Signature Mr. Manuel Correia, Jr.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 4, 1946, will subject you to be sum-

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

moned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 4, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Allan Hart Ezell.
2. Address (a) Home: Waikapu, Maui. Phone No. 4244.

(b) Business Maui Grand Hotel, Wailuku, Maui. Phone No. 925-22275.

3. When and Where born? Carlsbad, New Mexico.

4. If Naturalized, when and where?.....

5. How long in Territory? 6½ yr. County of Maui? 7 mo.

6. Married or single? Married. Number of children, if any? One.

7. Nationality of Father? Amer. of French extraction. Of Mother? Amer. of Irish-Italian extraction.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? District traffic mgr.—Maui County Hawaiian Airlines.

10. If employed, by whom and Name your superiors Hawaiian Airlines. Superiors—John Pugh,

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Robt. Frix, Alex Smith, Stanley C. Kennedy, all in Honolulu.

11. What has been your occupation during the past five years? 1941-1943 office mgr. Hawn Constructors in Maui, Mol. & Oahu, 1943-44 Chief USED, Honolulu Employment & Travel; 1944, to date sta. mgr. & tfc. mgr. Hawn Airlines, Kauai-Oahu, Maui.

12. What schools have you attended? Grade Schools in Texas & California, Texas University & West Point Prep School, San Antonio, Texas; Air Corps Primary Flying School, San Antonio, Texas.

13. What grade in school did you reach? Completed 2 yr. college.

14. Is there any physical reason why you should not sit as a Juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No—unless I am on Lanai or Molokai which are also under my control—with advance notice of at least a week on jury schedule will arrange to be on Maui.

Date: 9-25-46. Signature A. H. Ezell.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 12, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Plaintiff's Exhibit No. 23—(Continued)

(Testimony of Dr. John E. Reinecke.)

Note: Fill out each question in own hand writing, and on or before Oct. 12, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Stanley Cornwell Friel.

2. Address (a) Home: Manawai, Molokai. Phone No. 2W46.

(b) Business Kaunakahai, Molokai. Phone No. 2W17.

3. When and Where born? December 28, 1907, Honolulu.

4. If Naturalized, when and where?

5. How long in Territory? 38 years. County of Maui? 16 years.

6. Married or single? Married. Number of children, if any? 5.

7. Nationality of Father? Can. Of Mother? Can.-Hawn.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) none

9. What is your present occupation? General Foreman.

10. If employed, by whom and Name your superiors U. S. Engineer Office, Supply Branch, Kaunakakai, Molokai, Mr. C. L. Zeek, Puunene, Maui, T. H.

11. What has been your occupation during the past five years? Foreman and Construction Supt., U. S. Engineers.

12. What schools have you attended? St. Louis

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)
College, McKinley High School, University of Hawaii.

13. What grade in school did you reach? Sophomore (10).

14. Is there any physical reason why you should not sit as a juror? If so, what reason? none.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: 2 October 1946. Signature Stanley C. Friel.
(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 8, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 8, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Walter William Holt.

2. Address (a) Home: Haiku. Phone No. 4W515.

(b) Business Haiku. Phone No. 4W515.

3. When and Where born? October 28, 1903—Oahu.

4. If Naturalized, when and where?.....

5. How long in Territory? All. County of Maui? 1939-46.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

6. Married or single? Married. Number of children, if any? 3.

7. Nationality of Father? Part-Hawn. Of Mother? Part-Hawn.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None

9. What is your present occupation? Forester.

10. If employed, by whom and Name your superiors Board of Agriculture and Forestry, Mr. Wm. Crosby—(Territorial Forester).

11. What has been your occupation during the past five years? Same as above.

12. What schools have you attended? Punahau and University of Hawaii.

13. What grade in school did you reach? Maximum.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: September 28, 1946. Signature Walter W. Holt.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 12, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Note: Fill out each question in own hand writing, and on or before Oct. 12, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Charles E. Morris.
2. Address (a) Home: Kamiloloa, Molokai. Phone No. 11W49.

(b) Business Kaunakakai, Molokai. Phone No. 4W62.

3. When and Where born? Bayonne, N. J., Nov. 30, 1887.

4. If Naturalized, when and where?.....

5. How long in Territory? Since 1906. County of Maui? 1929.

6. Married or single? Married. Number of children, if any? 2 adults, 2 underage.

7. Nationality of Father? Irish Am. Of Mother? American.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Civil, Judge Banks—also criminal.

9. What is your present occupation? Moving pic exhibitor.

10. If employed, by whom and Name your superiors self.

11. What has been your occupation during the past five years? Same as above.

12. What schools have you attended? Public & 2 universities.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

13. What grade in school did you reach? Graduated.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: 10/6/46. Signature Charles E. Morris.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 9, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 9, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Edwin Kiyoshi Muroki.

2. Address (a) Home: Haiku Maui, Hawaii.

Phone No.

(b) Business Phone No.

3. When and Where born? March 3, 1908 at Paia, Maui, T. H.

4. If Naturalized, when and where?.....

5. How long in Territory? 38 years. County of Maui? 38 years.

6. Married or single? Married. Number of children, if any? 2.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

7. Nationality of Father? Japanese. Of Mother? Japanese.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Storekeeper.

10. If employed, by whom and Name your superiors Libby McNeill & Libby. Mr. F. Freteira and Mr. C. Sawyer.

11. What has been your occupation during the past five years? Storekeeper.

12. What schools have you attended? Paia Grammer School (8), Maui High School (4), University of Hawaii (2½).

13. What grade in school did you reach? Junior at U. of H.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: September 30, 1946. Signature E. K. Muroki.

(See Statutes—reverse side)

[Notation in pencil] OK. Grand.

Note: Failure to return this Questionnaire on or before Sept. 6th, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before September 6th, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Toshio Onuma.

2. Address (a) Home: P.O. Box 242—Lanai City, Lanai. Phone No.

(b) Business..... Phone No.....

3. When and Where born? Paauhau, Hawaii—Feb. 5, 1919.

4. If Naturalized, when and where?.....

5. How long in Territory? 27 years. County of Maui? 19 years.

6. Married or single? Married. Number of children, if any? 2.

7. Nationality of Father? Japanese? Of Mother? Japanese.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Two criminal cases (misdemeanor) in February, 1946.

9. What is your present occupation? Pineapple research worker.

10. If employed, by whom and Name your superiors Hawaiian Pineapple Co. James C. Medcalf, Superintendent.

11. What has been your occupation during the past five years? Same as item 9.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

12. What schools have you attended? Lanai Elementary and Lahainaluna Technical High School.

13. What grade in school did you reach? 12th.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: August 26, 1946. Signature Toshio Onuma.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 9, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 9, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name John Plunkett.

2. Address (a) Home: Keanse, Maui. Phone No. 8W1023.

(b) Business E. M. I. Co. Phone No. 2W581.

3. When and Where born? Lupe, Huelo, Maui.

4. If Naturalized, when and where?

5. How long in Territory? 65 yrs. County of Maui? Maui.

6. Married or single? Married. Number of children, if any? 10.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

7. Nationality of Father? Irish. Of Mother? Hawaiian.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Both.

9. What is your present occupation? Foreman E. M. I. Co., Keanse, Maui.

10. If employed, by whom and Name your superiors Robert Bruce.

11. What has been your occupation during the past five years? Foreman E. M. I. Co.

12. What schools have you attended? St. Anthony School & Kamehameha School.

13. What grade in school did you reach? Graduate from Kam School yr. 1900.

14. Is there any physical reason why you should not sit as a juror? If so, what reason?

15. Do you claim disqualification or exemption from jury service?

Why.....

Date: Oct. 4, 1946. Signature John Plunkett.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 12, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 12, 1946, mail or deliver

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)
to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Paul Raymond Rinehart.

2. Address (a) Home: Maunaloa, Molokai, T. H. Phone No. 2W24.

(b) Business Maunaloa, Molokai, T. H. Phone No. 2W24.

3. When and Where born? Dec. 25, 1916—Grant City, Mo.

4. If Naturalized, when and where?

5. How long in Territory? 5 yrs. County of Maui? Yes.

6. Married or single? Single. Number of children, if any?

7. Nationality of Father? German. Of Mother? Unknown.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Asst. Supt. Libby, McNeill & Libby—Maunaloa, Molokai, T. H.

10. If employed, by whom and Name your superiors Libby, McNeill & Libby. Mr. H. W. Larson.

11. What has been your occupation during the past five years? Army.

12. What schools have you attended? 8 yrs. Grammar School—Grant City, Mo., 4 yrs. High School, 5 yrs. college, U. of Missouri.

13. What grade in school did you reach? Graduate U. of Missouri.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

Why.....

Date: 4 Oct. 1946. Signature Paul R. Rinehart.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 10, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 10, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Albert E. Simpson.

2. Address (a) Home: Hana, Maui. Phone No. 2W1028.

(b) Business Hana, Maui and Honolulu. Phone No. 2W1018, Hon. 68223.

3. When and Where born? Oakland, California.

4. If Naturalized, when and where?

5. How long in Territory? 1½ years. County of Maui? 1 year.

6. Married or single? Married. Number of children, if any? 2.

7. Nationality of Father? American. Of Mother? English.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

9. What is your present occupation? Vice president Hana Ranch Co. and Representative in Honolulu of Irwin Estate of S. F.

10. If employed, by whom and Name your superiors Hana Ranch Co. L. Paul and Helene I. Fagan.

11. What has been your occupation during the past five years? Colonel U. S. Army Air Forces and Representative Irwin Estate.

12. What schools have you attended? University of California.

13. What grade in school did you reach? 3rd year University of Calif.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? Yes.

Why? I am the sole representative of the Irwin Estate in the Hawaiian Islands and my business requires my frequent residence in Honolulu for extended periods. Financial loss to my principal would result if I were unable to go there as required.

Date: Oct. 1, 1946. Signature Albert E. Simpson.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 7, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Note: Fill out each question in own hand writing, and on or before Oct. 7, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Anthony Apo Tam.

2. Address (a) Home: 1236-A Makawao, Ave.
Phone No.

(b) Business 1236-A Makawao, Ave. Phone
No.

3. When and Where born? Oct. 25, 1906. Makawao, Maui.

4. If Naturalized, when and where?

5. How long in Territory? 39 years. County of Maui? 32 years.

6. Married or single? Single. Number of children, if any?

7. Nationality of Father? Chinese. Of Mother? Chinese.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Served on a couple of criminal cases.

9. What is your present occupation? Farmer.

10. If employed, by whom and Name your superiors

11. What has been your occupation during the past five years? Farmer.

12. What schools have you attended? Makawao, McKinley High, University of Hawaii.

13. What grade in school did you reach? Senior.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

14. Is there any physical reason why you should not sit as a juror? If so, what reason?

15. Do you claim disqualification or exemption from jury service? No.

Why

Date: Signature

(See Statutes—reverse side)

Admitted.

Mrs. Bouslog: Then I offer, your Honor—

Judge Biggs: How many pieces, did you say?

Mrs. Bouslog: There are 20 questionnaires, which were all the questionnaires that were in the file for the 15 members of the grand jury.

Judge Biggs: There are 21?

Mrs. Bouslog: Exhibit 22, I offer photostatic copies of questionnaires of individuals, Filipinos, of the 19th and 1st precinct.

Judge Biggs: Same objection. Same ruling.

Miss Lewis: Yes, we had a general objection.

Judge Biggs: Very well. Number 24 then, is next? [267]

Mrs. Bouslog: Your Honor, may I—

Judge Biggs: Yes. I think you need this.

Mrs. Bouslog: Yes, I do.

Q. Doctor Reinecke, this is a questionnaire showing the name of Vincente Figueira, showing that he is a Filipino nationality, and that he reached the 9th grade in school. Did you find any person on the 1947 grand jury whose educational qualifications were no more than the 9th grade?

(Testimony of Dr. John E. Reinecke.)

A. I did.

Judge Biggs: Let me have that question.

(Question read by reporter.)

Q. Specifically, two on the 1947 grand jury had less than a 9th grade education?

A. Of these 21 people, Edmund Nunes had an 8th grade education, and Charles Edward Thompson also had an 8th grade education.

Miss Lewis: I did not get those names.

Judge Biggs: Repeat those, Mr. Witness.

A. Edmund Nunes, and Charles Edward Thompson.

Miss Lewis: Are they two?

Judge Biggs: Two, Nunes and Thompson.

Judge Metzger: Was that 9th or less than the 9th?

Mrs. Bouslog: Dr. Reinecke?

A. These two gentlemen had an 8th grade education, as compared with Mr. Figueira. He had a 9th grade education.

Judge Metzger: What I had in mind, did anyone else [268] compare with him on the 9th grade education?

A. Yes, your Honor, Edwin S. Bowmer, had a 9th grade education. Edwin S. Bowmer.

Mrs. Bouslog: With the stipulation of counsel, perhaps I can cut this short if I ask Mr. Crockett: I have here nine questionnaires which were introduced in evidence in the other case, and which are now before the court, all from persons of Filipino

(Testimony of Dr. John E. Reinecke.)

nationality, with 9th grade educations. Here is one with an 8th grade education—three with an 8th grade education—8th or 9th grade education, which were marked “questionable” on the return of the jury commissioner.

Judge Biggs: You want that admitted in evidence?

Mrs. Bouslog: They have been admitted in evidence.

Judge Biggs: They have been admitted? What is the stipulation?

Mrs. Bouslog: The stipulation is that they were marked “questionable” on the jury commissioner’s records.

Mr. Crockett: That appears on the face of the questionnaire itself.

Judge Biggs: Does it also appear on the jury commissioner’s records?

Mr. Crockett: I think so.

Mrs. Bouslog: These notations up here are my notations.

Judge Biggs: The question is whether or not you [269] are willing to stipulate that they were questionable on the jury commissioner’s records?

Mr. Crockett: Well, I thought it was on there.

Mrs. Bouslog: No. They are all referred to in the transcript.

Mr. Crockett: I will so stipulate. We reserve the right to check them and see if that is correct.

Judge Biggs: You may check. I admit it subject

(Testimony of Dr. John E. Reinecke.)

to your check. Unless the check brings forward something, the admission will be subject to a motion to strike.

Mrs. Bouslog: I have here a questionnaire of Vincente C. Saloricman, he shows an 8th grade education, whose questionnaire, Mr. Crockett—can you stipulate to this, is shown “not qualified?”

Mr. Crockett: Does that appear in the transcript?

Mrs. Bouslog: Yes, Mr. Crockett.

Mr. Crockett: Do you recall that page?

Mrs. Bouslog: I will give you the page, 331.

Q. Will you examine this questionnaire, Doctor Reinecke, and say if on its face it appears to state qualifications equal to those of persons for whom you have questionnaires who were on the 1947 grand jury?

Mr. Crockett: Was that question directed to education?

Mrs. Bouslog: The whole questionnaire and qualification, [270] the witness made the examination of the other questionnaires.

Mr. Crockett: The comparison is on the basis of education?

Mrs. Bouslog: Education is the only basis that is shown to differentiate.

Mr. Crockett: It is not a question directed to education, is it?

Mrs. Bouslog: Yes.

A. So far as education is concerned, Mr. Saloric-

(Testimony of Dr. John E. Reinecke.)

man seems to have the same qualifications as Mr. Thompson and Mr. Nunes.

Judge Metzger: There are 23 on the jury panel. There are only 21 of these questionnaires, two of them are—did not respond to questionnaires?

Mrs. Bouslog: No, your Honor. Let me explain what has been stipulated, what appears in the record. The grand jury commissioners had a file which purported to contain the 1947 questionnaires for the grand jury list, this whole list of 50, but all that they had was 20, only 20 questionnaires of the people on the list. So that these are all there are. Some of the persons who were actually drawn, no questionnaires appear for them in that particular file.

Judge Biggs: There was a request pending of Mr. Crockett's, what was that? I have forgotten it. You were to look at something. [271]

Mr. Crockett: What I asked counsel just a minute ago, was the page of the transcript. I just got the page, 328, or 330, I believe it is. This matter of the questionnaires, I have not had a chance to check it.

Mrs. Bouslog: If Mr. Crockett will consent, subject to objection at a later time, I will—these have been marked already.

Judge Biggs: Very well. We will let the question and the answer stand, subject to Mr. Crockett's possible revision as to the statements made by Mrs. Bouslog.

(Testimony of Dr. John E. Reinecke.)

Q. Doctor Reinecke, from your knowledge of the racial composition of the County of Maui, and from your analysis of the 1947 grand jury list, would you say that it represents a cross section of the community of Maui County?

Judge Biggs: Just a minute. Let me have that question.

(Question read by the reporter.)

Mr. Crockett: We object to that, if your Honor please, and submit that is calling for the conclusion of this witness, and he has not shown himself qualified to state whether or not it formed a cross section, particularly with reference to the standard laid down by the Supreme Court in cases along this line. There is not a single word or a single bit of testimony which shows that he knows anything about the actual qualifications of those persons when it [272] comes to their selection for the purpose of jury duty. Merely because a man is a citizen, has a citizenship, merely because he has a 6th to an 8th grade education is not sufficient.

Judge Biggs: I think I get your point. I am in some doubt as to whether a showing that no member of the Filipino nationality is upon a jury may not be of some significance. And the question may be directed to that. We have grave doubt as to whether or not the conclusion is particularly helpful, evidentially, but rather than exclude the evidence, we will receive it, subject to a motion to strike.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24

[Notation in pencil] Not qualified.

Note: Failure to return this Questionnaire on or before Oct. 4, 1946 will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 4, 1946 mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Vincente Compania Saloricman.

2. Address (a) Home: Lanai City, Lanai, Box 985. Phone No.

(b) Business

3. When and where born? Lahaina, Maui, July 19, 1924.

4. If Naturalized, when and where?

5. How long in Territory? 22. County of Maui? Yes.

6. Married or single? Married. Number of children, if any? One.

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Stevedore.

10. If employed, by whom and name your superiors Hawaiian Pine Co. Mr. Fraser.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

11. What has been your occupation during the past five years? Hawaiian Pine Co., Brakeman Krr. Co., then army.

12. What schools have you attended? Lanai City.

13. What grade in school did you reach? Eighth.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No experience.

15. Do you claim disqualification or exemption from jury service? Disqualification. Why? No high school education and no experience.

Date: 9/26/46. Signature Vincinte C. Saloricman.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 4, 1946 will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 4, 1946 mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Narcisso Sipe.

2. Address (a) Home: P. O. Box 122, Lanai City, Lanai. Phone No. None.

(b) Business None. Phone No.

3. When and where born? Nov. 3, 1915, Olowalu, Maui, T. H.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

4. If Naturalized, when and where? American citizen.

5. How long in Territory? 31 years. County of Maui? 31 years.

6. Married or single? Single. Number of children, if any? None.

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Crane fireman.

10. If employed, by whom and name your superiors Hawaiian Pineapple Co.

11. What has been your occupation during the past five years? Pineapple loader.

12. What schools have you attended? Kamehameha III School.

13. What grade in school did you reach? 7th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? None.

Why

Date: Sept. 26, 1946. Signature Narcisso Sipe.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

or before Oct. 8, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 8, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Vincente Engoring.

2. Address (a) Home: Haiku, Maui. Phone No.

(b) Business Phone No.

3. When and Where born? Feb. 10, 1925—at Kapahulu, Maui.

4. If Naturalized, when and where?

5. How long in Territory?
County of Maui?

6. Married or single? Single. Number of children, if any?

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Libby McNeill & Libby.

10. If employed, by whom and name your superiors Frank Fieteira.

11. What has been your occupation during the past five years? C.C.C. 1½ year. U.S.E.D. 2 years. Hana Plantation 1 year. A.T.S. ½ year.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

12. What schools have you attended Hana school.

13. What grade in school did you reach? 9th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason?

15. Do you claim disqualification or exemption from jury service?

Why

Date: Oct. 3, 1946. Signature Vincente Engoring.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 9, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 9, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Salvador Seno.

2. Address (a) Home: Kuiaha, Maui Phone No. None.

(b) Business Phone No.

3. When and Where born? Kohala, Hawaii, June 20th, 1913.

4. If Naturalized, when and where?

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

5. How long in Territory? 33 years. County of Maui? 19 yrs.

6. Married or single? Married. Number of children, if any? 4

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Carpenter.

10. If employed, by whom and name your superiors Edmund Ling.

11. What has been your occupation during the past five years? Laborer 2 yrs. for U. S. Engineers, 3 yrs. at Kahulin N. A. Station, carpenter.

12. What schools have you attended? Kohala grammar and Junior High Haiku School and Maui High.

13. What grade in school did you reach? 9th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why

Date: Oct. 6, 1946. Signature Salvador Seno.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 8, 1946, will subject you to be sum-

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

moned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 8, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Gilbert Eufonio Gonzado.

2. Address (a) Home: Baldwin Camp Hse. No. 31. Phone No. None.

(b) Business N.A.S. Kahului, Maui Phone. No.

3. When and Where born? Kapulena, Hawaii.

4. If Naturalized, when and where?

5. How long in Territory? Life (27½ yrs.).
County of Maui? Eight years.

6. Married or single? Married. Number of children, if any? Three.

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Cheffuer.

10. If employed, by whom and name your superiors N.A.S. Lt. Com. Jones and Lytle.

11. What has been your occupation during the past five years? Soldering U. S. Army.

12. What schools have you attended? Kapulena Grammar School, Kukuihaele Grammar School Konokoa High School and Kalakaua High.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

13. What grade in school did you reach? Nine.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

Why

Date: Oct. 3, 1946. Signature Gilbert E. Gonzado.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 9, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 9, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Francis Damion Segundo.

2. Address (a) Home: Haiku, Maui. Phone No.

(b) Business Phone No.

3. When and Where born? July 16, 1922, Honolulu.

4. If Naturalized, when and where?

5. How long in Territory? 24 years. County of Maui?

6. Married or single? Married. Number of children, if any? 3.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

7. Nationality of Father? Filipino. Of Mother? Hawaiian.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Laborer.

10. If employed, by whom and name your superiors Libby McNeill.

11. What has been your occupation during the past five years? Truck driver.

12. What schools have you attended? Haiku School.

13. What grade in school did you reach? 8th.

14. Is there any physical reason why you should not sit as a juror? If so, what reason?

15. Do you claim disqualification or exemption from jury service?

Why

Date: Oct. 3, 1946. Signature Francis Damion Segundo.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 4, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 4, 1946, mail or deliver

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Frederick Bibilone Saranillio.

2. Address (a) Home: P.O. Box No. 858, Lanai City. Phone No. None.

(b) Business none. Phone no. none.

3. When and Where born? Apr. 8, 1924, Mt. View, Hawaii, T. H.

4. If Naturalized, when and where? U.S.A.

5. How long in Territory? 22 years. County of Maui?

6. Married or single? Married. Number of children, if any? 1.

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Stevedore.

10. If employed, by whom and name your superiors Manuel Pavao.

11. What has been your occupation during the past five years? Truck driver, Army 3 mo. medical discharge.

12. What schools have you attended? Mt. View Hawaii, T. H.

13. What grade in school did you reach? 8th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? Not enough schooling.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

15. Do you claim disqualification or exemption from jury service? No.

Why

Date: 9/25/46. Signature Frederick Saranillio.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 3, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 3, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Douglas Marcelino Galoya.

2. Address (a) Home: Lanai City, Lanai. Phone No.

(b) Business Phone No.

3. When and Where born? Aug. 8th, 1920, Kahului, Oahu.

4. If Naturalized, when and where?

5. How long in Territory? 26 years. County of Maui?

6. Married or single? Married. Number of children, if any? None.

7. Nationality of Father? Filipino. Of Mother? Filipino.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

8. What experience have you had as a Juror?
(Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Truck driver.

10. If employed, by whom and name your superiors Hawaiian Pine Co. Manuel Perry, W. B. Caldwell.

11. What has been your occupation during the past five years? Truck driving.

12. What schools have you attended? Waianae School.

13. What grade in school did you reach? 8th.

14. Is there any physical reason why you should not sit as a juror? If so, what reason?

15. Do you claim disqualification or exemption from jury service? Lack of education.

Why

Date: 9-26-46. Signature Douglas M. Galoya.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 3, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 3, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

1. Full name John Cornelio.

2. Address (a) Home: Lanai City, Lanai. Phone No. None.

(b) Business None. Phone No. None.

3. When and Where born? Nuilii Kohala, Hawaii.

4. If Naturalized, when and where?

5. How long in Territory? 27 years. County of Maui?

6. Married or single? Single. Number of children, if any?

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Assistant gang luna.

10. If employed, by whom and name your superiors Hawaiian Pine Apple Co.

11. What has been your occupation during the past five years? Tractor operator, assist gang luna.

12. What schools have you attended? Mabapola, Hawaii.

13. What grade in school did you reach? 8 grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? None.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

Why

Date: Sept. 27, 1946. Signature John Cornelio.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 3, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 3, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Ted Simplicio Herolaga.

2. Address (a) Home: P.O. Box 13, Lanai.
Phone No.

(b) Business Phone No.

3. When and Where born? December 4, 1920.
Hilo, Hawaii.

4. If Naturalized, when and where?

5. How long in Territory? 25 years. County of Maui? 6 years.

6. Married or single? Single. Number of children, if any?

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror?
(Indicate whether Criminal or Civil case) None.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

9. What is your present occupation? Truck driver.

10. If employed, by whom and name your superiors Hawaiian Pineapple Co.

11. What has been your occupation during the past five years? 3 years operating tractor. 2 years truck driver.

12. What schools have you attended? Waianae School.

13. What grade in school did you reach? Nine years.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? Not enough education.

15. Do you claim disqualification or exemption from jury service? Yes.

Why Not enough education.

Date: September 27, 1946. Signature Ted S. Herolaga.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 4, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 4, 1946, mail or deliver

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name George Ramaila.

2. Address (a) Home: Lanai City, Lanai. Phone No.

(b) Business None. Phone No.

3. When and Where born? Maui. 1915, Aug. 8.

4. If Naturalized, when and where? Citizen.

5. How long in Territory? 31 years. County of Maui? For the past 9 years.

6. Married or single? Married. Number of children, if any? Three.

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Truck driver.

10. If employed, by whom and name your superiors Hawaiian Pine Co. Manager is D. Frazer.

11. What has been your occupation during the past five years? Truck driving.

12. What schools have you attended? Hilo High School Shop.

13. What grade in school did you reach? 8th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

Why

Date: September 26, 1946. Signature George Ramaila.

(See Statutes—reverse side)

[Notation in pencil] Qualified.

Note: Failure to return this Questionnaire on or before Oct. 3, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 3, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Carl Larato Herolaga.

2. Address (a) Home: Lanai City, T. H. Phone No.

(b) Business None. Phone No.

3. When and Where born? Hilo, Hawaii, 12-9-18.

4. If Naturalized, when and where?

5. How long in Territory?

County of Maui?

6. Married or single? Married. Number of children, if any? 4.

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

9. What is your present occupation? Truck driver.

10. If employed, by whom and name your superiors Hawaiian Pine Co.

11. What has been your occupation during the past five years? Truck driver.

12. What schools have you attended? Waianae School.

13. What grade in school did you reach? 8th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? None.

Why

Date: September 29, 1916. Signature Carl L. Herolaga.

(See Statutes—reverse side)

Admitted.

Mrs. Bouslog: I think from what the court said that a statement by Mr. Crockett this morning has misled the court as to what the plaintiffs are trying to prove. Our function is not merely that there is no Filipino—has never been a Filipino on the grand jury, our objection to the—because of the fact that there is no foreign laborer which is represented—

Judge Biggs: Well, you need not argue this point.

(Testimony of Dr. John E. Reinecke.)

Mrs. Bouslog: There is also the racial economic lines——

Judge Biggs: This question does go directly to the question of Filipinos on the grand jury.

Mrs. Bouslog: It was not intended to, your Honor.

Judge Biggs: How else can it go, please? [273]

Mrs. Bouslog: We are talking about a cross section, your Honor.

Judge Biggs: Your question is based on race.

Mrs. Bouslog: That's right, but also not only Filipinos, but the whole question of Caucasian and non-Caucasian, haole, and non-haole, as well as Filipinos.

Judge Biggs: Well, I think we will receive the answer, at any rate, subject to a motion to strike. Answer the question, please.

A. I don't think it forms a true cross section of the population of Maui County.

Mr. Crockett: May I move to strike——

Judge Biggs: It is already subject to a motion to strike. We will deny the motion to strike at this time, with leave to renew it at the close of the case.

Mr. Crockett: Very well.

Judge Biggs: Unless you want to make a statement for the record.

Mr. Crockett: What I had in mind, if the court please was this point: That counsel in her question used the term cross section. There is no showing

(Testimony of Dr. John E. Reinecke.)

that this witness knows or understands what is meant by cross section in the light of the decisions of the Supreme Court.

Judge Biggs: We are going into argument on a point which is really one for subsequent briefing, perhaps.

Mrs. Bouslog: May I ask the witness what he means [274] by cross section, as he used it in his answer?

Judge Biggs: I think the term cross section has a well defined meaning. Very well, ask the question. We will take the answer. What do you mean by cross section? What do you mean by a cross section?

A. I mean by a cross section a representation of all the ethnic groups of Maui County in somewhat like fair proportion to their total number in the population.

Judge Biggs: I think that is what he means.

Q. Would your answer be the same in respect—if the question were directed to economic representation on the 1947 grand jury for Maui County?

A. Yes. It would.

Mrs. Bouslog: You may cross examine.

Judge Biggs: This concludes your questions of this witness on direct examination?

Mrs. Bouslog: On direct examination, yes.

Miss Lewis: It is understood that last question is also subject to the motion to strike of the same nature?

(Testimony of Dr. John E. Reinecke.)

Judge Biggs: Very well.

Miss Lewis: Could I have a minute?

Judge Biggs: Yes. We will recess for five minutes.

(Recess) [275]

Mr. Crockett: We have no cross-examination.

Judge Biggs: That's all, thank you.

(The witness was excused.)

Mrs. Bouslog: Your Honor, I would like to offer at this time all of the Movant's exhibits in the challenge before Judge Cristy, Criminal Nos. 2412 and 2413 in the Circuit Court of the Second Judicial Circuit, with the exception of those which have already been specifically offered in connection with testimony given here. They are a part of the record that was stipulated to with the understanding that the exhibits would be accepted if produced and offered. I will have to ask the Court's permission to substitute copies of the documents for the Court and I will do my very best to get three copies if they will help the Court's convenience.

Judge Biggs: Is there any objection except as to relevancy?

Miss Lewis: We registered our general objection at the opening of the trial.

Judge Biggs: Very well, No. 25.

(Thereupon the documents referred to were marked Plaintiff's Exhibit No. 25 and received in evidence.)

PLAINTIFF'S EXHIBIT No. 25

Circuit Court, Second Circuit, Territory of Hawaii

Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII,

vs.

ABRAHAM MAKEKAU, et. al., and DIEGO
BARBOSA, et. al.,

MOVANTS' EXHIBIT A

Filed September 15, 1947 at 10:01 a.m. for identification.

D. M. TALLANT,

Deputy Clerk of said Court.

Maui Agricultural Co., Ltd.

Officers

H. A. Baldwin, president*

J. P. Cooke, vice president

R. G. Bell, vice president

J. W. Speyer, vice president

J. F. Morgan, treasurer

J. T. Waterhouse, secretary

A. H. Gorie, assistant treasurer

F. E. Steere, Jr., assistant treasurer

D. L. Oleson, assistant secretary

G. G. Kinney, auditor

Directors

A. F. Baldwin

J. P. Cooke

Plaintiff's Exhibit No. 25—(Continued)

R. G. Bell

Edwin Benner, Jr.

J. T. Waterhouse

J. W. Cameron

D. A. Cooke

C. R. Hemenway

J. F. Morgan

William Pullar

Pioneer Mill Company, Ltd.

Officers

H. A. Walker, president

H. P. Faye, vice president

G. W. Sumner, vice president

E. H. Wodehouse, vice president

S. M. Wodehouse, treasurer

W. T. Vorfeld, secretary

J. E. Ednie, assistant secretary & treasurer

H. C. Eichelberger, assistant secretary & treasurer

Young, Lamberton & Pearson, auditors

(At San Francisco Transfer Office)

P. A. Drew, vice president

R. E. Searby, vice president

F. K. Bottomly, assistant treasurer

Directors

H. M. Dowsett

H. P. Faye

H. V. von Holt

S. M. Lowrey

W. H. McInerny

Plaintiff's Exhibit No. 25—(Continued)

G. W. Sumner

H. A. Walker

G. P. Wilcox

E. H. Wodehouse

Hawaiian Commercial & Sugar Co., Ltd.

Officers

F. F. Baldwin, president

J. P. Cooke, vice president

R. G. Bell, vice president

A. L. Castle, vice president

J. F. Morgan, treasurer

J. T. Waterhouse, secretary

F. E. Steere, assistant treasurer

A. H. Gorie, assistant treasurer

D. L. Oleson, assistant secretary

G. G. Kinney, auditor

Directors

F. F. Baldwin

R. G. Bell

A. L. Castle

J. P. Cooke

C. R. Hemenway

J. F. Morgan

J. T. Waterhouse

Wailuku Sugar Company

Officers

P. E. Spalding, president

S. L. Austin, vice president

Starr Bruce, vice president

Plaintiff's Exhibit No. 25—(Continued)

R. G. A. Crowe, assistant vp and treasurer

H. C. Babbitt, assistant treasurer

C. F. Honeywell, secretary

G. R. Ewart, III, assistant secretary

Young, Lamberton & Pearson, auditors

Directors

S. L. Austin

T. A. Cooke

R. G. A. Crowe

H. T. Kay

A. Lewis, Jr.

M. A. Robinson

P. E. Spalding

Alexander & Baldwin, Ltd. (Sugar and
Pine Factors)

Officers

F. F. Baldwin, president

H. A. Baldwin, vice president*

R. G. Bell, vice president

J. W. Speyer, vice president

A. L. Dean, vice president

J. F. Morgan, treasurer

J. T. Waterhouse, secretary

A. H. Gorie, assistant treasurer

F. E. Steere, Jr., assistant treasurer

D. L. Oleson, assistant secretary

J. B. Hurd, assistant secretary

G. G. Kinney, auditor

Directors

F. F. Baldwin

R. G. Bell

Plaintiff's Exhibit No. 25—(Continued)

J. P. Cooke
C. F. Damon
J. W. Speyer
C. F. Damon
A. L. Dean
C. R. Hemenway
J. F. Morgan
J. T. Waterhouse
J. P. Winne

California Packing Corporation

Officers

Robert M. Barthold, president
Alfred W. Eames, vice president
Albert M. Lassiter, vice president
Roy L. Pratt, vice president
Ralph Brown, vice president
George R. Ward, vice president
Stanley Powell, vice president
Harold Z. Baldwin, secretary
Humphrey L. Jone, treasurer
William H. Carr, comptroller
Walter H. Levy, purchasing agent

Directors

Robert M. Barthold
Leonard E. Wood
Alfred W. Eames
Albert M. Lassiter
Roy L. Pratt
Balfour D. Adamson

Plaintiff's Exhibit No. 25—(Continued)

Ralph Brown

William Fries

Andrew G. Griffin

Willard Griffin

Ralph E. Sanborn

C. K. McIntoch

Stanley Powell

Marshall P. Madison

Nion R. Tucker

George R. Ward

Henry Nichols

A. K. Tichenor

L. W. Jongeneel

Ira S. Lillich

N. B. Livermore

George B. Robbins

Maui Electric Company

Officers

William Walsh, president

D. T. Fleming, vice president

D. C. Lindsay, vice president

W. H. Balthis, vice president

A. S. Spenser, secretary

Mrs. Alta D. Craft, assistant secretary

J. Walter Cameron, treasurer

Colin C. Murcoch, assistant treasurer

Directors

W. H. Balthis

Frank W. Broadbent

Plaintiff's Exhibit No. 25—(Continued)

J. Walter Cameron
E. S. Elmore
D. T. Fleming
Mrs. Helen V. Foss
J. H. Kunewa
D. C. Lindsay
William Walsh
W. K. Watkins

Libby, McNeil & Libby

Officers

D. W. Creedon, president & general manager
Leroy J. Taylor, vice president
S. A. Halmon, vice president
C. S. Bridges, vice president
V. E. Willkie, vice president
P. M. Rodgers, vice president
J. T. Knowles, vice president
Earl Price, vice president
F. T. Slivon, comptroller & secretary
S. M. Jaspar, treasurer
A. E. Strand, assistant comptroller
E. J. Becker, assistant secretary
L. E. Curry, assistant treasurer
W. H. Long, general attorney

Directors

E. B. Cosgrove
D. W. Creedon
C. F. Glore
S. A. Holman
A. T. Kearney

Plaintiff's Exhibit No. 25—(Continued)

W. H. Long

C. H. Swift

Leroy J. Taylor

E. E. Willkie

Hawaiian Pineapple Co., Ltd.

Officers

H. A. White, president

A. G. Budge, vice president

C. C. Cadagan, vice president

Boud MacNaughton, vice president

H. E. Overesch, vice president

H. E. MacConaughy, vice president

R. M. Botley, vice president

George W. Burgess, assistant vice president

F. P. Mehrlick, assistant vice president

J. Dickson Pratt, assistant vice president

R. R. Rohlfing, assistant vice president

John Shafer, assistant vice president

C. A. White, assistant vice president

E. B. Woodworth, assistant vice president

Roy N. Figueroa, treasurer

K. B. Barnes, secretary

James Cruickshank, assistant treasurer

Bruce Kinsley, assistant treasurer

James H. Tabor, assistant secretary

V. R. Williams, assistant secretary and treasurer

T. E. Leach, assistant secretary and treasurer

Directors

James D. Dole

A. G. Budge

Plaintiff's Exhibit No. 25—(Continued)

E. W. Carden
S. N. Castle
C. F. Damon
C. J. Henderson
Linvingston Jenks
F. D. Lowery
Theodore F. Trent
George S. Waterhouse
Henry A. White
J. Howard Worrall

American Factors, Ltd. (Sugar)

H. A. Walker, president
H. P. Faye, vice president
G. W. Sumner, vice president
R. E. White, vice president
W. W. Monahan, vice president
M. L. Berlinger, vice president
S. M. Lowrey, treasurer
W. T. Vorfeld, secretary
J. E. Ednie, asst. secy. and treas.
H. C. Eichelberger, asst. treas. and secy.
Young, Lamberton & Pearson, auditors
P. A. Drew, vice president (at San Francisco)

Directors

C. E. S. Burns
E. J. Greaney
W. F. Dillingsham
H. P. Faye
G. W. Fisher

Plaintiff's Exhibit No. 25 (Continued)

C. R. Hemenway

U. J. Rainalter

S. M. Lowrey

G. W. Sumner

H. A. Walker

G. P. Wilcoxx

C. Brewer & Co., Ltd.

Officers

P. E. Spalding, president

S. L. Austin, vice president

H. T. Kay, vice president

Starr Bruce, vice president

R. G. A. Crowe, asst. vice pres. & treas.

W. J. Maze, assistant vice pres.

H. C. Babbitt, assistant treasurer

J. J. G. Webster, assistant treasurer

C. W. Smith, assistant treasurer

C. F. Honeywell, secretary

Walter E. Smith, assistant secretary

F. A. Bechert, assistant secretary

A. H. Armitage, assistant secretary

G. R. Weart, III, assistant secretary

Young, Lamberton & Pearson, auditors

Directors

S. L. Austin

Starr Bruce

T. A. Cooke

Carter Galt

H. T. Kay

R. G. A. Crowe

Plaintiff's Exhibit No. 25 (Continued)

A. Lewis, Jr.
R. McCorriston
P. E. Spalding

American Can Company
(Mainland)

D. W. Figgis, president
Carlyle H. Black, executive vice president
G. H. Kellogg, vice president
A. R. Pfelz, vice president
R. C. Taylor, vice president
J. A. Steward, vice president
C. J. Preis, vice president
E. H. Bell, vice president
W. C. Stolk, vice president
R. L. Sullivan, vice president
W. J. Wardell, vp and comptroller
Richard H Berger, secretary & treasurer

Directors

Morris J. Sullivan, chairman
Arthur Choate
William Ewuing
George G. McMurtry
Edward S. Moore
Paul Moore
D. W. Figgis
James B. Taylor
Roy E. Tomlinson
Carlyle H. Black
G. H. Kellogg
Charles E. Auchincloss

Plaintiff's Exhibit No. 25 (Continued)

Russell C. Taylor

S. Sloan Colt

W. J. Wardell

Maui Pineapple Co.

Officers

J. Walter Cameron, president

Joseph P. Cooke, vice president

Rolland G. Bell, vice president

William P. Tuttle, vice president

James F. Morgan, treasurer

John T. Waterhouse, secretary

Fred E. Steere, Jr., assistant treasurer

E. Percy Lydgate, assistant treasurer

David E. Oleson, assistant secretary

Charles R. DuBois, assistant secretary

Directors

J. Walter Cameron

Joseph P. Cooke

Rolland G. Bell

William P. Tuttle

James F. Morgan

John T. Waterhouse

Samuel A. Baldwin

A. L. Dean

Molokai Ranch, Ltd.

Officers

George P. Cooke, president & manager

Harrison R. Cooke, secretary

Robert M. Cooke, vice president

Plaintiff's Exhibit No. 25 (Continued)

Ralph B. Johnson, vice president
C. C. Spalding, vice president
Cooke Trust, treasurer and agent

Directors

Harrison R. Cooke
Robert M. Cooke
Ralph B. Johnson
C. C. Spalding
C. M. Cooke, III
A. H. Rice, Jr.
G. Paul Cooke, Jr.

Hana Ranch (Kaeleku Sugar Co.)

Officers

Albert G. Simpson, president
P. E. Spalding, vice president
S. L. Austin, vice president
P. I. Fagan, vice president
R. G. A. Crowe, treasurer
W. E. Harrison, assistant treasurer
C. Werner Smith, auditor

Directors

Albert G. Simpson
P. E. Spalding
S. L. Austin
P. I. Fagan
W. E. Harrison
H. T. Kay

Plaintiff's Exhibit No. 25 (Continued)
Ulupalakua Ranch, Ltd.

Officers

F. F. Baldwin, president
J. Platt Cooke, vice president
Rolland G. Bell, vice president
Edward K. Baldwin, vice president
James F. Morgan, treasurer
John T. Waterhouse, secretary

Directors

F. F. Baldwin
J. Platt Cooke
Rolland G. Bell
Edward K. Baldwin
James F. Morgan

Baldwin Packers

Frank F. Baldwin, president
Sam. A. Baldwin, vice president
R. G. Bell, vice president
J. Walter Cameron, treasurer
Edward H. K. Baldwin, secretary
J. F. Morgan, assistant treasurer
J. T. Waterhouse, assistant secretary

Directors

F. F. Baldwin
S. A. Baldwin
Rolland G. Bell
J. Walter Cameron
Edward H. K. Baldwin
D. T. Fleming

Plaintiff's Exhibit No. 25 (Continued)

R. H. Baldwin

Joseph P. Cooke

Dwight H. Baldwin

Kahului Railroad Co.

F. F. Baldwin, president

J. Platt Cooke, vice president

R. G. Bell, vice president

John W. Speyer, vice president

James F. Morgan, treasurer

Albert H. Gorie, assistant treasurer

John T. Waterhouse, secretary

Fred E. Steere, Jr., assistant treasurer

David L. Oleson, assistant secretary

William Walsh, general manager

Directors

F. F. Baldwin

J. Platt Cooke

R. G. Bell

James F. Morgan

East Maui Irrigation Co.

H. A. Baldwin, president* (died 10/8/46)

F. F. Baldwin, vice president

J. Platt Cooke, vice president

R. G. Bell, vice president

Asa F. Baldwin, vice president

James F. Morgan, treasurer

John T. Waterhouse, secretary

F. E. Steere, Jr., assistant treasurer

David L. Oleson, assistant secretary

Plaintiff's Exhibit No. 25 (Continued)

Directors

H. A. Baldwin*

F. F. Baldwin

J. Platt Cooke

R. G. Bell

Asa F. Baldwin

James F. Morgan

Haleakala Ranch, Ltd.

Officers

H. A. Baldwin, president*

R. H. Baldwin, vice president

J. Platt Cooke, vice president

Samuel A. Baldwin, treasurer

Leslie Bisset, secretary

James F. Morgan, assistant treasurer

Directors

H. A. Baldwin*

R. H. Baldwin

Samuel A. Baldwin

Leslie Bisset

J. Walter Cameron

Admitted.

Plaintiff's Exhibit No. 25 (Continued)
Circuit Court, Second Circuit, Territory of Hawaii
Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et. al., and DIEGO
BARBOSA, et. al.

MOVANTS' EXHIBIT 5

Table I
Caucasians and Non-Caucasians in the Population
and Grand Jury Panel of Maui County

In the Population:	Caucasian	%	Non-Caucasian	%	Total
¹ Male and Female	6,989	12.5	48,991	87.5	55,980
² Male, 21 yrs. & over in 1940..	2,027	11.2	16,038	88.8	18,065
³ Male, 21 to 60 yrs. in 1947....	2,208	11.2	17,517	88.8	19,725
⁴ Male, 21-60 yrs., citizens.....	2,074	16.2	10,747	83.8	12,821
⁵ Male, 21-60 yrs., citizens with 4 or more yrs. of school attendance	2,172	15.5	11,850	84.5	14,022
With 8 yrs. or more of school attendance	1,787	17.0	8,735	83.0	10,522
⁶ Registered voters, 1946.....	1,542	22.9	5,186	77.1	6,728

In the Population:	Caucasian	%	Non-Caucasian	%	Total
⁷ 1947 Panel	28	56.	22	44.	50
1946 Panel	36	72.	14	28.	50
1945 Panel	32	64.	18	36.	50
1944 Panel	33	66.	17	34.	50
1943 Panel	32	64.	18	36.	50
1942 Panel	29	58.	21	42.	50

Footnotes to Table I

¹2nd Series. Characteristics of the Population, Hawaii:

Caucasians as defined therein. Non-Caucasians include all others.

²Ibid., p. 28, Table 19

³Correction for 7-yr. discrepancy.

No. to be added:

No. of male Caucasians reaching 21 yrs. between 1940-1947:
522

No. of male Non-Caucasians reaching 21 yrs. between 1940-
1947; 4,089 (Calculated from Table 19, p. 28, using brackets
"15-19 yr." and $\frac{1}{4}$ of "20-24 yrs." and "10-14 yrs.")

No. to be deducted:

No. of male Caucasians over 60 years in 1947: 341

No. of male non-Caucasians over 60 years in 1947: 2-610

(Ibid., Table 19, p. 28)

Plaintiff's Exhibit No. 25—(Continued)

⁴Correction for citizenship, Ibid., Table 18, p. 27 and p. 28

Total Caucasian, non-citizens, outside of Honolulu: 498 (3%)

Total non-citizens outside of Honolulu: 16,078 (100%)

No. of non-citizens, males, 21 yrs. and over in 1940:

3,941 plus

6,550 Filipinos

10,491

10,491 \times 3% equals 315 Caucasians

10,491 — 315 equals 10,176 non-Caucasians

2,208 — 315 equals 1,893

17,517 — 10,176 equals 7,341

Apply correction as in ³. Add 1,927 Japanese and Filipinos who are not citizens and over 60 years in 1947.

⁵4 years of school attendance:

Male, 25 yrs. old & over with 4 yrs. of school completed: 8,420 (p. 27, Ibid.)

Estimated no. of those becoming 21 yrs. old with 4 yrs. & over of school attendance between 1940-1947: 12,573 (p. 27, Ibid.)

Total no. between 14-24 yrs. in and out of school attendance. All must have at least 4 yrs. of schooling in accordance with Territorial compulsory education laws.

Male over male and female ratio for Territory minus Honolulu, p. 33, Ibid:

5,977 divided by 11,343 equals 52%.

52% times 12,573 equals 6,626 educated males.

Of the 6,626, 862 are male Caucasians, p. 28, Ibid., taking "14-24 yrs." bracket. Hence, educated, non-Caucasians equals 6,626 minus 862 equals 5,764. From p. 28 Ibid. 1,651 Caucasians over 24 yrs. old. If all are assumed to have the required educational qualification, we get 6,769 non-Caucasians qualified: i.e., 8,420 (see above) minus 1,651. Hence, those qualified educationally:

Caucasian Male

Non-Caucasian Male

862

5,764

1,651

6,769

2,513

12,533

⁶From County Clerk, Maui County

⁷From Special Investigation

Admitted.

Filed Sept. 15, 1947 at 11:32 a.m.

D. M. TALLANT,

Deputy Clerk of said Court.

Plaintiff's Exhibit No. 25—(Continued)
Circuit Court, Second Circuit, Territory of Hawaii
Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et. al., and DIEGO
BARBOSA, et. al.

MOVANTS' EXHIBIT 6

Table II

Caucasians (Including Part-Hawaiians) and Non-Caucasians
in the Population and the Grand Jury Panel of Maui

In the Population, 1947	Caucasians and Part-Hawaiians		Non-Caucasian	
	No.	%	No.	%
Male and Female Total	14,904	26.6	41,076	73.4
¹ Male, 21-60 yrs., citizens with 4 yrs. or more school yrs. completed	3,672	26.2	10,350	73.8
In the Panel:				
1947 Panel	38	76.0	12	24.0
1946 Panel	39	76.0	11	22.0
1945 Panel	42	84.0	8	16.0
1944 Panel	37	74.0	13	26.0
1943 Panel	41	82.0	9	18.0
1942 Panel	40	80.0	10	20.0

¹To note ⁵ of Table I, a total of 1,500 part-Hawaiians (most of whom are part-Caucasians), (see p. 28, Census, op. cit.) is added on 2,513 and subtracted from 12,533. For sources and calculation method, see footnotes of Table I.

Admitted.

Filed Sept. 15, 1947 at 1:54 p.m.

D. M. TALLANT,

Deputy Clerk of said Court.

Plaintiff's Exhibit No. 25—(Continued)

Circuit Court, Second Circuit, Territory of Hawaii
Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et al,

MOVANTS' EXHIBIT 7

Table 3

DISTRIBUTION OF EMPLOYED WORKERS BY MAJOR OCCUPATION GROUP¹
IN THE POPULATION AND IN THE PANEL

Classes	Male & Female	%	Male	%	After Deductions for Male Non- Laborers from Classes, 4-12%	Panel Members in 1947 No.	%
1 Professional and semi-prof. workers.....	1217	5.56	556	3.15	.....	2	4
2 Farmers & farm managers.....	570	2.61	468	2.65	.....	1	2
3 Proprietors, managers & officials, exc. farm.....	852	3.89	681	3.86	.....	33	66
4 Clerical, sales & kindred workers.....	1,617	7.40	1,122	6.35	.....	5	10
5 Craftsmen, foremen & kindred workers.....	1,670	7.63	1,619	9.17	1,368	1	2
6 Operatives & kindred workers.....	2,330	10.66	1,828	10.35	1,746	2	4
7 Domestic service workers.....	944	4.32	248	1.40	248	.....	.....
8 Service workers, except domestic.....	983	4.50	574	3.25	487	1	2
9 Farm laborers & farm foremen.....	9,305	42.57	8,638	48.92	8,195	1	2
10 Farm laborers (unpaid family workers).....	346	1.58	116	.66	116	.....	.....
11 Laborers, except farm & mine.....	1,936	8.85	1,747	9.89	1,747	1	2
12 Occupation not reported.....	95	.43	60	.34	60	3	6
TOTAL	21,865	100.00	17,657	100.00	13,967	50	100

Plaintiff's Exhibit No. 25—(Continued)

Foot notes to Table 3

¹Population data for first two columns taken directly from "Population, 2nd Series, Characteristics of Population, Hawaii, 1940" p. 30, except for the combining of professional and semi-professional classes.

²Classes 1-4, all non-laborers, and classes 10, 11, 12, and 7, all laborers.

Class 5: Deduct 155 foremen and 96 own-account craftsmen. Former figure obtained by applying Territory minus Honolulu ratio, p. 17 and 18, *ibid.* 9.16% \times 1619 equals 155; while latter obtained from Table 4, note ⁴ (with deduction of 2 tailors).

Class 6: Deduct 82 for own-account operatives.

Class 8: Deduct 76 policemen and 11 firemen.

Class 9: Deduct 443 farm foremen. Estimated by taking the ratio of foremen to worker (20 to 1) of "Pioneer Mill Co. Annual Report," and dividing 21 into 9305. This is checked by an alternative estimate; using the number of foremen outside of Honolulu as a ratio of the number in this category for the same area as given in Census, p. 18, and multiplying by the total in the above: 5% \times 8638 equals 432 foremen.

From these the number of those meeting the citizenship and educational qualifications are the following:

In general, Class 1-4 together with foremen and own-account workers in the other categories have about 3,748 qualifying while Class 5-12 have about 9,070 qualifying. See Note ¹³ under Table 4.

³Occupation status from "Directory of City and County of Honolulu and the Territory of Hawaii," Polk-Husted Directory Co., 1940-41. A few in the directory were determined on the basis of special investigation.

Admitted.

Filed Sept. 15, 1947 at 2:04 P.M.

D. M. TALLANT,

Deputy Clerk of said Court.

Plaintiff's Exhibit No. 25—(Continued)

Circuit Court, Second Circuit, Territory of Hawaii
Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et al,

MOVANTS' EXHIBIT 8

Table 4

CLASS OF WORKER OF EMPLOYED PERSONS
(EXCEPT OF PUBLIC EMERGENCY WORK). MAUI COUNTY

	Male & Female	%		12 Male	%	13 Qualified Male	%
Total Employed:							
⁵ Wage & salary workers.....	21,865	100.0		16,354	100.0	12,073	100.0
⁴ Employers & own-account workers.....	19,550	89.4		556	3.4		
³ Unpaid family workers.....	1,874	8.6		540	3.3		
² Class of worker not reported.....	346	1.6					
	95	.4				2,387	19.8
⁶ Wage & Salary Workers.....	19,550	100.0		16,354	100.0		
⁷ Professional & semi-prof. workers employed.....	1,080	5.5		556	3.4		
⁸ Managerial-supervisory employees	540	2.8		540	3.3		
⁹ Government officials	169	.9		169	1.0		
¹⁰ Clerical, sales & kindred workers.....	1,617	8.3		1,122	6.9		
¹¹ Labors	16,144	82.5		13,967	85.4	9,686	80.2

Plaintiff's Exhibit No. 25—(Continued)

This classification is taken from the "U. S. Census Bureau, Population, Second Series, Characteristics of the Population, Hawaii, 1940," p. 3 and p. 16. For definitions, see esp. p. 3 and U. S. Census Bureau, "Population, Comparative Occupation Statistics for the U. S., 1870-1940,"

²From Occupational Table, Census, *ibid*, p. 30.

³Same source as ².

⁴680 Unincorporated proprietors. Retail, wholesale, service, amusements, hotel. See "Census of Business, Hawaii, Alaska, & Puerto Rico," 1939, p. 19.

547 From "Second Series, Pop.," p. 30, minus the number of farm managers, 23; see for the number of farm managers, "Census of Agric., Hawaii, 1940,"

137 Own Acc't. professionals (dentists, lawyers, doctors, designers, surveyors, opticians, interior decorators, kindergarten, masseurs, midwives, nurses, photographers, mortuary, etc.). See Statehood Hearings, 79th Congress. 2nd Session, 1946, H.R. 236, p. 674, p. 674 et al. (No. of persons engaged in various businesses in Maui.)

510 Own-acc't. craftsmen (Bakers, blacksmiths, carpenters, mechanics, plumbers, shoe repair, painters, tin-smiths, tailoring, etc.) and others (Barber shops, baths, beauticians, taxi drivers, dressmakers, peddlers.) Statehood Hearings, *op. cit*.

Plaintiff's Exhibit No. 25—(Continued)

^aResidual: Add ³ and ⁴ and subtract from total: 21,865 minus 2,315 equals 19,550.

Accuracy of the result checked by using the ratio of the number of wage and salary workers to the total employed in the area outside of Honolulu.

From the Census, 2nd Series, p. 16, this ratio equals 88.8% (99,145 divided by 111,593) equals 88.8% times 21,865 (total employed in Maui) gives 19,416 which is a difference of only 34, compared with the calculated total.

^aAccording to the Census, op. cit., p. 3: "This class consists of persons who worked as employees for wages or salary (in cash or kind). It includes not only factory operatives, laborers, clerks, etc., who worked for wages, but also persons working for tips or for room and board, salesmen and other employees working for commissions, and salaried business managers, corporation executives, and government officials."

⁷As defined by the Census. Total prof. and semi-prof. workers according to Census, op. cit., 1217, deduct 137 own-account prof. and semi-prof. (See Note ⁴.)

⁸Includes also salaried business managers, executives, foremen, superintendents, supervisors, department heads: 540. Total taken from the tabulation of Polk-Husted Directory Co.'s Directory of City & County of Honolulu and the Territory of Hawaii, 1939-1940, Section on Maui County.

⁹Includes also postmasters, inspectors, policemen, 76 policemen, Annual Report, Police Dept. Maui, 1940, p. 7, and by tabulation of Polk-Husted Directory as in ⁸, 93 for the others.

¹⁰Includes bookkeepers, clerks, typists, stenographers, secretaries, timekeepers, cashiers, insurance solicitors and other commissioned employees. From Census, p. 30, "clerical, sales and kindred workers."

Plaintiff's Exhibit No. 25—(Continued)

¹¹As a residual: 19,550—(⁷ to ¹⁰ equals 3,406) equals 16,144. This total checks closely with the number of women laborers indicated in the Census, p. 30, (about 2,463). Latter plus 13,967 male laborers in Table 3 in the fifth column gives a total of 16,430.

¹²For prof. and semi-prof., see p. 30, Table 20.

For managerial-supervisory, all assumed to be males.

For government officials, all.

For clerical, sales and kindred workers, see p. 30, Table 20.

For laborers, see previous note.

¹³From Table 1, 12,821 citizens and 14,022 with four years of schooling.

If all non-laborers are assumed to be citizens and with adequate school, we get 2,387 for non-laborers.

For the own-account workers, all except own-account craftsmen and service workers are assumed to be citizens and with sufficient education. (1874—510 equals 1364, note * above.) Thus 12,821—(1364 plus 2387) gives 9070 qualified laborers.

From p. 16, Census, the proportion of Filipino and Japanese male entreps. are determined by taking Territory-minus-Honolulu ratios: 7.7% for the former and 47.7% for the latter of the total Maui entrep. If half of the Japanese entreps. are assumed to be non-citizen (see Census of Business, op. cit.), then, we have 31.5% of entreps. who are male and non-citizen. 31.5% times 1,874 equals 590.

From p. 16, Territory-minus-Honolulu ratio determined for female entreps.

28.6 times 1,874 equals 536.

536 plus 590 equals 1,126.

1,874 minus 1,126 equals 748.

12,821 minus (2,387 plus 748) equals 9,686.

Filed Sept. 15, 1947, at 2:25 P.M.

D. M. TALLANT,

Deputy Clerk of said Court.

Plaintiff's Exhibit No. 25—(Continued)

¹From Table 4, adding item in ⁸ and ⁹. All are assumed to be male and qualified from the point of view of citizenship and education. See notes under Table 4.

²From Table 4, item⁴. 536 females deducted, see note ¹³, Table 4. 590 non-citizens deducted, see note ¹³.

³From Table 4, note ¹⁰.

⁴16,144 plus 346 family help, see Table 4.

13,967 from Table 4 plus 116 male family help, Census, p. 30.
9,686 from Table 4.

⁵All others include class of worker not reported and miscellaneous professional and semi-professionals. See Table 4. Calculated as a residual.

⁶See Table 4 for source. Each percentage divided by 2 gives the actual number of panel members in each category. "Managerial-supervisory" includes besides managers, superintendents, supervisors, overseers, department heads, also head of clerical workers, foremen, luna, government officials. "Laborers" include cowboy.

All others include band member, teacher, forester, unreported occupation, and those labeled just "employed."
⁷ and ⁸ Combination of the first three classes.

Actual number for the panel: Managerial—41, 41, 41, 42, 39, 40
Laborers — 5, 3, 5, 7, 7, 8

Admitted.

Filed Sept. 15, 1947, at 2:35 p.m.

D. M. TALLANT,
Deputy Clerk of said Court.

Plaintiff's Exhibit No. 25—(Continued)

CIRCUIT COURT, SECOND CIRCUIT
TERRITORY OF HAWAII

Criminal No. 2412 - 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et al

MOVANTS' EXHIBIT 13

1946

REGISTER OF MALE VOTERS OF COUNTY OF MAUI,
3RD REPRESENTATIVE DISTRICT, 2ND PRECINCT—HONOLUA.
(Non-ILWU Members)

No.	Name	Legal Address	Occupation
1.	Ah Sing, Louis.....	Honokohua	Farmer
2.	Ah Sing, Philip.....	Honokohua	Farmer
3.	Burns, Alfred S.....	Mahinahina	Ass't. Field Superintendent
4.	Cockett, Albert J.....	Kahana	Retired K.R.R. Co. Mechanic
5.	Fleming, David A.....	Mahinahina	Superintendent—B.P.
6.	Fleming, D. T.....	Honolua	Manager—Baldwin Packers
7.	Haili, Joseph.....	Honolua	Ex-employee—B.P.
8.	Himori, Tadao.....	Honolua	Store Clerk
9.	Iaela, Kaaukea.....	Honokohua	Tractor Driver

Plaintiff's Exhibit No. 25—(Continued)

10. Kanamu, Keahi	Honokohua	Pensioner
11. Kapaku, John Kalia	Honokohua	Auto Mechanic—B.P.
12. Keahi, Haili	Honokohua	County employee
13. Kinner, Clyde Arthur	Mahinahina	Pvt. Contractor
14. Kukahiko, John	Honolua	Supervisor—B. Packers
15. Kurose, Hideo	Honolua	Supervisor—B. Packers
16. Lasponia, Pedro	Mahinahina	Supervisor—P.M. Co.
17. Makaena, William R.	Honolua	Supervisor—B. Packers
18. Matsushima, Haruo	Honolua	Supervisor—B. Packers
19. Matsushima, Shuichi	Honolua	Clerk—Honolua Store
20. Medeiros, Thomas	Napili	Superintendent—Spraying
21. Ogawa, Mitsugi	Honolua	Retired County employee
22. Okimoto, Shotchi	Honolua	Store Clerk
23. Osakoda, Thomas T.	Honokohua	Supervisor—B. Packers
24. Pali, Edmund	Honolua	Instructor—D.P.I.
25. Pali, Solomon Kaia	Honolua	County employee
26. Reimann, Jr., August	Napili	County employee
27. Russell, George Dobson	Honokohua	Superintendent—B. P.
28. Scott, Adam	Honokohua	Field Superintendent
29. Seki, Shuji	Honolua	Ass't. Field Superintendent
30. Shimomura, Yoshimatsu	Honolua	Personnel Director—B.P.
31. Tomlinson, Robert N.	Kahana	Supervisor—B. Packers
		Standard Oil Co. (Lahaina)

Filed: Sept. 18, 1947, at 11:30 A.M.

/s/ D. M. TALLANT,
Deputy Clerk of Said Court.

Plaintiff's Exhibit No. 25—(Continued)

Circuit Court, Second Circuit
Territory of Hawaii

Criminal Nos. 2412 - 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et al

MOVANTS EXHIBIT 14

1946

REGISTER OF MALE VOTERS OF COUNTY OF MAUI,
3RD REPRESENTATIVE DISTRICT, 2ND PRECINCT—HONOLAU
(ILWU Members)

No.	Name	Legal Address	Occupation
1.	Abe, Yoshio	Honolua	B. Packers employee
2.	Aoyama, Shigeru	Honokohua	B. Packers employee
3.	Asato, Shoko	Mahinahina	P. M. Co. employee
4.	Boteilho, Joseph	Honokohua	B. Packers employee
5.	Fujiwara, Hiroto	Honokohua	B. Packers employee
6.	Furukawa, Nobuo	Honolua	B. Packers employee
7.	Hapakuka, John	Honokohua	B. Packers employee
8.	Harada, Toshio	Honolua	B. Packers employee
9.	Harada, Yuichi	Honolua	B. Packers employee

Plaintiff's Exhibit No. 25—(Continued)

10. Hayashi, Kiyoshi	Honolua	B. Packers employee
11. Higashi, Joichi	Honokohua	B. Packers employee
12. Hiraiwa, Masaaki	Honokohua	B. Packers employee
13. Hirashima, Masatoshi	Honolua	B. Packers employee
14. Hirokane, Katsumi	Honokohua	B. Packers employee
15. Ito, Sunao	Honolua	B. Packers employee
16. Ito, Yoshiharu	Honolua	B. Packers employee
17. Kaaihue, George	Honolua	B. Packers employee
18. Kaaihue, John L.	Honokohua	B. Packers employee
19. Kaaihue, Thomas	Honolua	B. Packers employee
20. Kahalia, Sam H.	Honolua	B. Packers employee
21. Kalama, Stephen	Honokohua	B. Packers employee
22. Kamaka, Lawrence	Honolua	B. Packers employee
23. Kashima, Fred	Honolua	B. Packers employee
24. Keahi, Charles	Honokohua	B. Packers employee
25. Keahi, Joe	Honolua	B. Packers employee
26. Keanu, William D.	Honokohua	B. Packers employee
27. Kekona, Thomas	Honolua	B. Packers employee
28. Kikuta, Kunio	Honokohua	B. Packers employee
29. Kishaba, Chosei	Mahinahina	P. M. Co. employee
30. Koa, Jr., David	Honolua	B. Packers employee
31. Kusuda, Walter M.	Honolua	B. Packers employee
32. Luen, Jacob Solomon	Honolua	B. Packers employee
33. Mahuna, Solomon	Honolua	B. Packers employee
34. Marciel, Francis	Honolua	B. Packers employee
35. Mathias, Manuel F.	Honokohua	B. Packers employee
36. Michimoto, Isami	Honolua	B. Packers employee
37. Michimoto, Tadashi	Honokohua	B. Packers employee
38. Michimoto, Yoshio	Honolua	B. Packers employee
39. Morinaga, Paul	Honolua	B. Packers employee

Plaintiff's Exhibit No. 25—(Continued)

40. Naganuma, Edward Linzo	Honokohua	B. Packers employee
41. Naganuma, George Yoiehi	Honokohua	B. Packers employee
42. Nagao, Kumataro	Honolua	B. Packers employee
43. Nagata, Minoru	Honokohua	B. Packers employee
44. Nahina, George	Honolua	B. Packers employee
45. Nakagawa, Mike M.	Honolua	B. Packers employee
46. Nakamura, Shigeyoshi	Honolua	B. Packers employee
47. Nishimura, Isamu	Honolua	B. Packers employee
48. Nohara, Yoshi	Honokohua	B. Packers employee
49. Nohara, Yutaka	Honokohua	B. Packers employee
50. Oda, Liichi	Honolua	B. Packers employee
51. Okano, Kunichi	Honolua	B. Packers employee
52. Okubo, Hajime	Honolua	B. Packers employee
53. Pali, Harry	Honolua	B. Packers employee
54. Reimann, George A.	Napili	B. Packers employee
55. Shigaki, George	Honolua	B. Packers employee
56. Shigaki, Takashi	Honokohua	B. Packers employee
57. Shimomura, Shigeru	Honolua	B. Packers employee
58. Shimomura, Yusaku	Honokohua	B. Packers employee
59. Tada, Takeshi	Honolua	B. Packers employee
60. Takahashi, Hideo	Honokohua	B. Packers employee
61. Tonouchi, Isamu	Mahinahina	P. M. Co. employee
62. Uehiyama, Tadao	Honolua	B. Packers employee
63. Watanabe, Toshiyuki	Honokohua	B. Packers employee
64. Yamaguchi, Yoshinobu	Honokohua	B. Packers employee
65. Yanagi, George	Honolua	B. Packers employee

Filed Sept. 18, 1947 at 11:31 A.M.

/s/ D. M. TALLANT,
Deputy Clerk of Said Court.

Plaintiff's Exhibit No. 25—(Continued)

Circuit Court, Second Circuit, Territory of Hawaii
Criminal Nos. 2412-2413

TERRITORY OF HAWAII,

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et al

MOVANTS' EXHIBIT 15

Length of Service of Members of Grand Jury Panel

1942-1947, Maui County

No. of those who were selected on the grand jury for :

5 Consecutive Years.....	2
4 Consecutive Years.....	6
3 Consecutive Years.....	15
2 Consecutive Years.....	31

TOTAL 54

No. of those who were selected on the grand jury for :

4 Non-consecutive Years.....	2
3 Non-consecutive Years.....	1
2 Non-consecutive Years.....	6

Total No. of Different Individuals Selected for the
Grand Jury Panel, 1942-1947..... 203

Of a total of 300 man-years served by Maui grand jury panel members over the 1942-1947 period, 141 years were served consecutively by 54 individuals, i.e. 47% of the total man-years were served consecutively.

Filed Sept. 16, 1947 at 3:16 P.M.

/s/ D. M. TALLANT,
Deputy Clerk of Said Court.

Plaintiff's Exhibit No. 25—(Continued)

Circuit Court, Second Circuit, Territory of Hawaii
Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et al,

MOVANTS' EXHIBIT 17

LIST OF REGISTERED VOTERS FOR THE GENERAL ELECTION,
NOVEMBER 5TH, 1946, THIRD REPRESENTATIVE DISTRICT
BY NATIONALITIES

Precincts	MALE											TOTALS.....
	American.....	Chinese.....	English.....	Filipino.....	Hawaiian.....	Part-Hawaiian..	Japanese.....	Korean.....	Porto Rican.....	Portuguese.....	All Others.....	
1st. Lanai City	23	14	0	18	39	27	190	3	4	11	7	336
2nd. Honolulu	4	1	0	1	23	8	54	0	0	3	3	97
3rd. Mala - Lahaina	14	3	1	6	40	32	267	0	4	28	11	406
4th. Kam III - Lahaina	19	7	1	4	49	13	139	0	0	21	4	257
5th. Olowalu	1	0	0	0	8	1	4	0	0	1	0	15
6th. Wailuku Elementary School	30	6	2	4	46	27	127	1	4	44	22	313
7th. Iao Elementary School...	49	42	5	4	32	42	151	0	1	73	40	439
8th. Pihana - Wailuku	4	16	1	1	57	41	196	0	11	65	16	408
9th. Papohaku - Wailuku	8	9	0	4	33	29	106	2	4	34	6	235
10th. Wahee	2	5	0	1	52	20	43	0	3	28	2	156
11th. Kahakuloa	0	0	0	0	11	1	0	0	1	0	0	13

Plaintiff's Exhibit No. 25—(Continued)

12th.	Kaniuni	23	11	1	3	42	19	196	0	0	33	10	338
13th.	Puunene	35	5	0	13	26	25	323	1	17	142	23	610
14th.	Spreckelsville	19	0	1	1	9	3	143	0	3	50	6	235
15th.	Lower Paia	23	15	0	3	19	10	120	1	11	78	6	286
16th.	Upper Paia	39	6	3	7	35	20	200	0	27	143	30	510
17th.	Keahua	2	0	0	1	10	7	92	1	1	35	6	155
18th.	Makawao	23	10	0	0	28	13	88	0	15	123	15	315
19th.	Haiku	10	10	0	12	28	18	90	0	3	49	16	236
20th.	Huelo	2	0	0	2	20	7	3	0	1	4	2	41
21st.	Keanae	1	4	0	1	43	10	1	0	1	2	1	64
22nd.	Nakiku	0	0	0	0	3	1	0	0	0	4	0	8
23rd.	Hana	12	5	0	3	73	11	26	1	1	14	4	150
24th.	Kipahulu	1	1	0	1	13	2	0	0	0	0	0	18
25th.	Kaupo	0	2	0	0	18	3	1	0	0	0	1	25
26th.	Honuaula	3	0	0	0	22	5	17	0	0	1	0	48
27th.	Keokea	19	33	0	4	32	20	100	0	1	73	9	291
28th.	Kihei	2	3	0	1	17	3	15	0	1	5	1	48
29th.	Halawa	1	0	0	0	13	1	0	0	0	0	0	15
30th.	Pukoo	13	3	0	1	52	35	4	0	0	2	1	111
31st.	Kaunakakai	21	12	0	3	54	33	79	0	0	9	4	215
32nd.	Hoolehua	7	4	0	0	83	15	3	0	0	3	2	117
33rd.	Maunaloa	7	3	0	4	7	2	33	0	0	3	2	61
34th.	Kalaupapa	10	7	1	0	72	26	15	0	0	18	7	156
Totals		427	237	16	103	1109	530	2826	10	114	1099	257	6728

Filed September 16, 1947, at 2:28 P.M.

For identification.

D. M. TALLANT,
Deputy Clerk of said Court.

Mrs. Bouslog: This is a complete set of the exhibits. These are the original papers.

Judge Biggs: The court receives these documents with the express understanding that copies will be substituted [276] therefor promptly and the originals will be returned to the custody of the Clerk who produced these here.

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: Is that satisfactory, sir?

Mr. Crockett: Yes, that is satisfactory.

Mrs. Bouslog: Now, your Honors, I have so advised Mr. Crockett I would like to call him as a witness.

Judge Biggs: Call counsel as a witness?

Mrs. Bouslog: Unfortunately he is the prosecutor of Maui County and he has an official capacity as well as a capacity as a defendant. He is a defendant and he has consented.

Judge Biggs: He is a defendant, is he?

Mrs. Bouslog: Yes.

Judge Biggs: And he has consented?

Mrs. Bouslog: Have you consented?

Mr. Crockett: I have no objection.

Judge Biggs: Judge Harris and myself are informed by Judge Metzger that this is the practice in this Court and in the Courts of the Territory. Therefore, although the procedure would be very unusual, and I doubt if it would be permitted in our state or federal court, we will bow to the local custom. Mr. Crockett, should the Court warn you respecting your constitutional rights?

Mr. Crockett: I don't think I have any any more, if the Court please. [277]

Judge Biggs: Swear Mr. Crockett.

WENDELL F. CROCKETT

called as a witness by the Plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. State your name, please.

A. Wendell F. Crockett.

Q. What is your occupation?

A. Attorney at law and deputy county attorney of the County of Maui.

Q. How long have you been deputy county attorney for the County of Maui?

A. Since July 1, 1919.

Q. In your capacity as deputy county attorney for the County of Maui, have you presented most of the criminal cases to the grand jury and to the courts in the County of Maui?

A. Generally speaking I do.

Q. If an order of this Court is not made and entered restraining and enjoining further proceedings in connection with the criminal proceedings against Barbosa, what do you, as deputy county attorney intend to do in regard to the criminal complaints?

(Testimony of Wendell F. Crockett.)

A. Carry out the duties as prescribed by law.

Q. Is it not a fact that unless restrained, you will proceed to bring the criminal charges set forth in the complaints [278] before the grand jury in Maui County seeking an indictment in connection with the charges set forth in the complaint?

A. Not intending to argue the matter, it is the practice of the prosecuting officer to present the witnesses to the grand jury and to assist the grand jury in the examination of the witnesses. We do not present specific charges.

Mrs. Bouslog: I don't believe, your Honor—I ask the answer be stricken on the ground it is not responsive to the question.

Judge Biggs: We doubt frankly whether the testimony is pertinent. Read the question, please.

(The question was read by the reporter.)

Judge Biggs: I think the question as phrased is objectionable, Mrs. Bouslog. We order it stricken. I think what you actually want to ask is this: Is it not your intention, Mr. Crockett, to present the evidence respecting these particular plaintiffs to the grand jury to the end that they may return an indictment?

Mrs. Bouslog: Relative to these charges.

Judge Biggs: I beg your pardon?

Mrs. Bouslog: Relative to the charges.

The Witness: That is in substance correct, if the Court please.

(Testimony of Wendell F. Crockett.)

Q. (By Judge Biggs): That is in substance correct? A. Yes. [279]

Q. (By Mrs. Bouslog): Now unless you are restrained by this Court, what do you as deputy county attorney intend to do with respect to the indictments pending in Proceedings No. 2365, Territory of Hawaii vs. Kahlokula?

Miss Lewis: I object to that question. It has been stipulated that if there is no injunction those persons will be arraigned. I don't see what else is required.

Judge Biggs: What more do you want than that, Mrs. Bouslog?

Mrs. Bouslog: There is nothing about the trial, your Honor.

Judge Biggs: Well, they would be arraigned and that is part of the orderly procedure before going to trial. Do you want the record to show here that it is actually the intention after arraignment to proceed with the prosecutions?

Mrs. Bouslog: That's right. If the Court doesn't believe it is necessary——

Judge Biggs: The Court is not here to take a position as to what is or may not be necessary. That rests with counsel.

Mrs. Bouslog: Yes, your Honor, in our petition we allege that unless restrained then Mr. Crockett as a defendant will proceed with the arraignment and trial of these cases.

Judge Biggs: I think we are wasting time about

(Testimony of Wendell F. Crockett.)

a very small matter. Mr. Crockett, is it your intention after [280] arraignment to proceed with the prosecution of these cases?

Miss Lewis: If the Court please, could I say one word?

Judge Biggs: Yes, you may object to the Court's question if you wish.

Miss Lewis: We are not trying to be technical, but a judge of the court is a defendant here and we represent him too. Apparently counsel doesn't understand that the judge will hear their pleas, and how can we say whether Mr. Crockett is going to try the cases or not? I consider it most improper.

Judge Biggs: Well, there is that point, of course.

Mrs. Bouslog: Your Honor, in this question we have, "What do you intend to do? Do you intend to proceed as deputy county attorney?" We are not directing it to the Court at all, but merely what Mr. Crockett as a defendant intends to do. Nor do we ask him in any effect what the judge will do, but it is merely what he as deputy county attorney for the County of Maui will do?

Judge Biggs: The Court will withdraw its own question. The Court thinks it should state as a matter of record to end this particular phase of this controversy that we are of the opinion that the stipulation to the effect that the plaintiffs would be arraigned is sufficient as the first step in the orderly procedure of the prosecution.

(Testimony of Wendell F. Crockett.)

Q. (By Mrs. Bouslog): All right, Mr. Crockett, in your experience [281] and to your own personal knowledge as deputy county attorney for the County of Maui, has there ever been a Filipino on the grand jury up to and including 1947?

A. I do not believe there have been any Filipinos on the grand jury.

Q. To your own knowledge and personal experience, has there ever been a person employed as a field hand on the plantations, the sugar or pineapple plantations on the grand jury?

A. I couldn't answer that question because I have never taken much note of their occupation unless I knew them personally.

Q. In your experience of 30 years as deputy county attorney for the County of Maui, have you ever prosecuted any person for unlawful assembly and riot except as it grew out of a labor dispute?

Miss Lewis: I object to the question, your Honor. We would have to have a whole foundation laid in every incident in order to make any comparison whatsoever.

Judge Biggs: The Court thinks that is a pertinent question in the light of the background of this case. Objection overruled.

Q. (By Mrs. Bouslog): Will you read the question, please?

(The question was read by the reporter.)

A. To my recollection except for the present cases, there was only one case prosecuted in the

(Testimony of Wendell F. Crockett.)

County of Maui for unlawful [282] assembly, and that grew out of an alleged kidnapping that took place during a labor dispute.

Mrs. Bouslog: That's all, Mr. Crockett.

Judge Biggs: Cross-examine, Miss Lewis, or perhaps you desire to cross-examine yourself. Do you want to make a statement, or would Miss Lewis prefer to cross-examine. The situation is a little bit beyond my experience.

Miss Lewis: I think it is beyond mine too. The subject of direct covered more than I had understood that it was going to perhaps.

Judge Biggs: Perhaps Mr. Crockett would like to add something.

Mr. Crockett: I would like to make a statement.

Cross Examination

Mr. Crockett: In regard to the question which I was asked concerning Filipinos serving on the grand jury, I am very well acquainted with what I would call most of the Filipinos in Maui, that would come in the class that might be considered eligible for serving on juries, and they have not been persons who are citizens, and it is only within the past three or four years that several of the persons who in my mind and my own personal opinion would be considered as qualified jurors, both grand or trial jurors, have been naturalized. This year in 1948 the grand jury panel list shows one Filipino, a Mr. Gamponia, who is manager of a very large business concern [283] there and who has become naturalized

(Testimony of Wendell F. Crockett.)

as a citizen and was selected and did serve on the grand jury panel.

Q. (By Judge Biggs). Of what year?

A. 1948. But up to that time the Filipinos who had been naturalized and who were citizens were generally veterans of World War I, and during the past four years there have been a few Filipinos who were born in the islands and have recently reached voting age and have just begun to appear on the voting list. That is all I have to say.

Redirect Examination

By Mrs. Bouslog:

Q. Mr. Crockett, do you think you know personally all the intelligent, eligible voting Filipinos in Maui County?

A. Practically I do.

Q. Now Mr. Gamponia, what large outfit is he the manager of?

A. The Oriental Benevolent Association. I am not sure whether it is an incorporated concern, but he built it up to have about \$1,000,000 worth of assets.

Mrs. Bouslog: Thank you, Mr. Crockett.

Judge Biggs: Do you desire to make any further statement by way of redirect-examination?

Mr. Crockett: I think that is all.

Judge Biggs: Thank you very much.

(The witness was excused.)

Judge Biggs. Any further witnesses? [284]

Mrs. Boslog: Your Honor, perhaps this also is

out of the usual experience, but to tie in to the testimony given by Mr. Nicholas Sibolboro, I am the only person who can state to the Court or take the stand and state what the rest of that incident regarding those 93 people involves.

Judge Biggs: How can you tell it from your own knowledge?

Mrs. Bouslog: Because I was there, your Honor.

Judge Biggs: You were there. Well, I must say we are getting into unusual circumstances.

Mrs. Bouslog: This is the last testimony, your Honor.

Judge Biggs: Very well, we will take it. Swear Mrs. Bouslog, please.

HARRIET BOUSLOG

called as a witness by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

Mrs. Bouslog: My name is Harriet Bouslog. My address is Honolulu, T. H. I am the attorney for the International Longshoremen's and Warehousemen's Union. In that capacity I act as and on a standby basis when there are periods of labor disputes, or periods of great stress. On July 13, 1947 a Sunday, at the hour of eleven o'clock, I received a telephone call advising me that a large group of people had been arrested at Wahiawa in connection with picketing activities. I [285] immediately went

(Testimony of Harriet Bouslog.)

to the police station in Honolulu and talked to Dan Liu, the assistant or acting chief of police at that time and asked him the nature of the charges against the 93 people who had been arrested. In my presence by telephone he attempted to get in touch with Captain Mookini who was in charge of the strike detail for the pineapple strike in the City and County of Honolulu. It took, I think, something like an hour and one-half to finally contact Captain Mookini. The telephone conversation took place in my presence, and after the conversation Mr. Liu told me that the 83 people——

Mr. Crockett: If the Court please, we object to what Mr. Liu told her.

Judge Biggs: I think you will have to omit statements as to conversations, although you may tell what you did or what you heard.

The Witness: I heard Mr. Liu talking to Mr. Mookini, Captain Mookini, and heard him say, "So they are being charged or held for unlawful assembly". I stayed at the police station from approximately eleven or twelve o'clock in the morning until three or four o'clock in the afternoon. Captain Liu, at my request, contacted Captain Mookini, or the police officers at the Wahiawa police station, or he put in calls in my presence, but the people were not finally brought to Honolulu until four or five o'clock in the afternoon. At the time they arrived I talked with the people and they still [286] did not know what they were charged with.

(Testimony of Harriet Bouslog.)

Miss Lewis: I move to strike this whole line of testimony as to what the prosecutor or the police in Honolulu have done or may do.

Judge Biggs: Strike that portion beyond "I talked with the persons".

The Witness: I talked with Mr. Sibolboro.

Judge Biggs: All you are doing is offering corroboration, is that correct?

The Witness: No, your Honor, the defendants never knew that the police had advised me that they were to be charged with unlawful assembly and riot for which they were held for practically a full day.

Judge Biggs: That is the substance of what you testified?

The Witness: That is correct.

Judge Biggs: Very well, cross-examine.

Cross Examination

By Miss Lewis:

Q. Mrs. Bouslog, are you testifying that this incident involving these 83 people was the same matter that involved Mr. Sibolboro?

A. No, Miss Lewis. There were eight people arrested in one group, as Mr. Sibolboro testified, and 85 in another group, but they were all held at the Wahiawa police station at the [287] same time and brought into Honolulu at the same time, so that the 93 people arrived together.

Q. As a matter of fact, those were two different incidents, were they not?

A. That is correct, but there were 83 people in

(Testimony of Harriet Bouslog.)

one group who were arrested at one time and Mr. Sibolboro and seven others, I believe, who were arrested at a different time at different places in the vicinity of Wahiawa.

Q. Have you examined the police records to see what those 83 people were charged with?

A. I haven't examined the police records. As their attorney I know that they were, I believe, charged with obstructing the highway.

Q. So that this bringing into your testimony of unlawful assembly is based entirely on your overhearing a discussion between two police officers as to what charge they should bring?

A. No, it is based upon or as the result of being told that. I remained at the police station all day or until they were brought into the station.

Q. Now, Mrs. Bouslog, is that incident involving the 83 persons the same one that is involved in a case called the Territory vs. Duz?

A. No, Miss Lewis, the case against the 83 people, I believe, was nolle prossed by the City and County Prosecutor. [288]

Q. As a matter of fact, isn't it a fact that that is the same happening at Turner's Switch that is now involved in a proceeding pending in Judge Moore's Court?

A. I believe that is the case of the people who were with Mr. Sibilboro, but not the 83; but I haven't seen the police records. I don't know what the police records show.

(Testimony of Harriet Bouslog.)

Q. It is your testimony that Territory vs. Duz involves the Sibolboro incident; is that your testimony?

A. I haven't been able to figure out yet what the contempt proceedings before Judge Moore do involve. I haven't talked to the witnesses, Miss Lewis. Mr. Symonds has handled that.

Q. Doesn't the information in that case specify it concerns a matter at Turner's Switch?

A. I can't say of my own knowledge.

Q. You really don't know what incident it concerns, is that it?

A. I know that the case where the 83 people were arrested is not the case that is before Judge Moore at the present time, but that is contempt under a restraining order limiting picketing.

Q. My question was directed to this: Were not the 83 people involved in an incident at Turner's Switch?

A. No, I believe they were just walking up and down the highway. I don't know whether it was Turner's Switch or where it was. [289]

Miss Lewis: If the Court please, I don't want to take time for further cross-examination. I would like to move to strike the testimony. To clear up these matters we would have to bring in all these different police records and other proceedings. I think we are going entirely too far afield, your Honor. To go into the City and County of Honolulu, which is under an entirely different—it is under

(Testimony of Harriet Bouslog.)

City and County administration. The prosecutor is appointed by the Mayor. True, the Attorney General has general supervision, but there has been no offer to show that the Attorney General personally directed these particular charges that Mrs. Bouslog was referring to.

Judge Biggs: What about the proposition, Mrs. Bouslog, that this, albeit a subordinate part of the Attorney General's office, was nonetheless not under his control in the sense that he directed the proceedings?

Mrs. Bouslog: I think that the labor policies of the Territory are directed from the Attorney General's office.

Miss Lewis: Well, if the Court please, Mrs. Bouslog says she thinks. I would like to have that answer stricken. That is purely a matter of opinion.

Judge Biggs: Yes, strike the answer. We will deny the motion to strike, and you, of course, may answer the testimony by appropriate evidence if you see fit. Any further questions? [290]

Miss Lewis: No, your Honor.

Judge Biggs: Thank you. Now, does that conclude your case?

Mrs. Bouslog: May I consult a moment please? Yes, that's all, your Honor.

(Witness excused.)

Judge Biggs: Does that conclude your case?

Mrs. Bouslog: I think there is one table that was referred to but not marked for an exhibit. It

was the haoles on the grand jury panel, 1942 to 1947.

Judge Biggs: I thought that had been admitted. Are you sure that it has not? Have you seen this, Mr. Crockett?

Mr. Crockett: Yes, except for one or two errors on it which we will not bother with, it is substantially correct.

Judge Biggs: Very well, let it be marked subject to the same ruling. Admitted and marked subject to the same ruling. Exhibit 26.

(Thereupon, the document referred to was marked Plaintiffs' Exhibit No. 26 and received in evidence.)

PLAINTIFF'S EXHIBIT No. 26

HAOLES ON GRAND JURY PANELS

1947

Allen, R.
Baldwin, E.
Baldwin, R.
Bowmer, E.
Broadbent, F.
Bruce, R.
Burns, A.
Elmore, E. S.
English, H.
Ezell, A.
Fleming, J.
Fredholm, G.
Haygood, P.
Moodie, A.
Morris, C.
Percy, W.
Peterson, H.
Reinhart, P.
Simpson, A.
Trask, J.
Waterhouse, A.

1946

Baldwin, A.
Burns, Wm.
Bush, F. G.
Bradley, R. R.
Benner, H. B.
Collins, A. J.
Carmichael, J.
Dease, D.
?Dickson, Wm.
Gay, F. J. S.
Hebert, L.
Harris, T. C.
Hoxie, J. W.
Manke, E.
Marques, C. N.
Nedermeyer, J.
Sabin, E. F.
Schattauer, F. C.
Scott, F.

1945

Balthis, W. H.
Benner, H. B.
Bush, F. G.
Collins, A. J.
?Dickson, Wm.
Chalmers, Jos.
DuBois, C.
English, H.
Gay, F. J. S.
Gill, R. E.
Gielow, L. A.
Hoxie, J. W.
Rexford, K. J.
Sabin, E. F.
Smith, A. E.
Sutherland, C.
Tuttle, Wm. P.
Willett, C. J.

1944

Ashdown, C. W.
Bates, W. A.
Benner, H. B.
Caldwell, H. B.
Bainbridge, M.
Chatterton, C. E.
Bush, F. G.
Dubois, C.
Elmore, E. S.
English, H.
Gay, F. J. S.
Gielow, L. A.
Giles, A. O.
Hoxie, J. W.
Nuenzig, Wm.
McCorriston, O.
Rexford, K. J.
Singlehurst, J. M.
Tuttle, Wm. P.
Thompkin, G. W.
Willett, C. J.
Wold, R. L.

1943

Ashdown, C. W.
Bates, W. A.
Bainbridge, M.
Bush, F. G.
Butler, B. J.
?Casey, T. A.
Crabbe, E. C. S.
DuBois, C.
Chatterton, C. E.
Eitner, A. B.
Elmore, E. S.
English, H.
Fraser, D.
Hoxie, J. W.
Hughes, R. H.
Prescott, W. F.
Patterson, John
Rexford, K. J.
Richardson, R. G.
Wayne
von Tempsky, R. G.

1942

Baldwin, H.
Bates, W. A.
Coffin, Lee
Eitner, A. B.
Conrad, A. W.
Elmore, E. S.
Fraser, D.
Gerner, E.
Hartman, S. J.
Mair, Wm. A.
Mant, R. F.
Patterson, John
Peterson, H.
Plunkett, Ch.
Prescott, W. F.
Rice, H. F.
Richardson, W.
von Tempsky, R. G.
Rexford, K. J.
Burnett, C. H.

Hubbard=Port.

Admitted.

Judge Biggs: You are ready to proceed, Miss Lewis?

Miss Lewis: If the Court please, at this time I would like to move to strike the matters where we have reserved the right to strike. I don't know how much argument the Court wants. I perhaps can make that general motion, or shall I enumerate?

Judge Biggs: I think you might as well make the [291] general motion, and I think we will reserve passing on the motion until the close of the case.

Miss Lewis: The matters where we have reserved a motion to strike?

Judge Biggs: Yes.

Miss Lewis: I also move to dismiss the actions on all the grounds stated in our written motion and on the ground that the proof has not substantially altered the case. I could argue that at length, but I think the Court would rather hear arguments at some other time.

Judge Biggs: Yes, I think it is preferable to hear arguments at some other time.

Mrs. Bouslog: Before the Defendants continue, there was one matter that I forgot to present to the Court and that is this: The Plaintiffs have and they offer to the Court, a film. The defendants also have a film which they are going to show to the Court. The film that we have and what we offer, it shows picketing at the Maui Agriculture Company at the exact place where the Kaholokula——

Judge Biggs: What about the time?